

No. 12037

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United States  
Court of Appeals  
for the Ninth Circuit

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COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,  
vs.  
SAMUEL GOLDWYN,  
Respondent.

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Transcript of Record

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Petition to Review a Decision of The Tax Court  
of the United States

FILED

DEC 7 - 1948

PAUL P. O'BRIEN,

CLERK



No. 12037

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United States  
**Court of Appeals**  
for the Ninth Circuit

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of the United States

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Ezzell, Marvin A.

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## APPEARANCES:

For Petitioner:

FERDINAND TANNENBAUM, Esq.,  
GEORGE LEWIS, Esq.,  
Z. N. DIAMOND, Esq.

For Respondent:

WILLIAM A. SCHMITT, Esq.

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Docket No. 8770

SAMUEL GOLDWYN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES

1945

July 19—Petition received and filed. Taxpayer notified. Fee paid.

July 19—Copy of petition served on General Counsel.

July 19—Request for hearing at New York City filed by taxpayer. 7/26/45 granted.

Aug. 17—Answer filed by General Counsel.

Aug. 22—Copy of answer served on taxpayer.  
(New York City)

1946

Sept. 13—Hearing set November 4, 1946, in New York City.

Oct. 31—Motion for leave to file amended petition, amendment lodged, filed by taxpayer. 11/4/46 Granted.

Oct. 31—Hearing set November 4, 1946 in New York City on taxpayer's motion.

Oct. 31—Copy of motion, amended petition and notice of hearing served on General Counsel.

Nov. 4,

& 7—Hearing had before Judge Johnson on merits. Stipulation of facts filed. Motion to amend petition and amended petition; answer to amended petition; appearances of George Lewis and F. Tanenbaum, & Z. N. Diamond as counsel filed at hearing. Briefs due 12/19/46. Reply brief 1/6/47.

Nov. 25—Transcript of hearing 11/4/46 filed.

Nov. 25—Transcript of hearing 11/7/46 filed.

Dec. 5—Motion for extension to 1/3/47 to file brief, filed by General Counsel. 12/6/46 Granted as to both parties.

Dec. 31—Motion for extension to 1/17/47 to file brief, filed by taxpayer. 1/3/47 Granted.

1947

Jan. 3—Motion for extension to 2/3/47 to file brief, filed by General Counsel. 1/6/47 Granted.

Jan. 16—Brief filed by taxpayer.

1947

- Feb. 5—Motion for leave to file the attached brief, brief lodged, filed by General Counsel. 2/6/47 Granted. Copy served.
- Feb. 24—Motion for leave to file the attached memorandum reply brief, brief lodged, filed by General Counsel. 2/25/47 Granted.
- May 26—Motion to substitute photostatic copies for exhibits, filed by taxpayer. 6/12/47 Granted.
- Sept. 30—Findings of fact and opinion rendered, Judge Johnson. Decision will be entered under Rule 50. 10/2/47 Copy served.
- Oct. 24—Order amending opinion entered 9/30/47, entered.
- Oct. 31—Computation for entry of decision filed by General Counsel. Agreed to.
- Nov. 17—Decision entered. Judge Johnson. Div. 10.

1948

- Feb. 4—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.
- Feb. 10—Proof of service of notice of filing petition for review from Ferdinand Tannenbaum, Esq.
- Feb. 17—Proof of service of notice of filing petition for review from Samuel Goldwyn, taxpayer.
- Mar. 15—Certified copy of order from 9th Circuit extending time to 5/4/48 to prepare and transmit record filed.



1948

Apr. 26—Certified copy of order from 9th Circuit extending time to 6/18/48 to prepare and transmit record filed.

June 1—Certified copy of order from 9th Circuit extending time to 9/16/48 to prepare and transmit record filed.

Aug. 23—Designation of record filed by General Counsel with notice of service by mail thereon.

Aug. 30—Proof of service of designation of record from attorney for taxpayer. [2\*]

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Tax Court of the United States

Docket No. 8770

SAMUEL GOLDWYN,

Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in its notice of deficiency dated June 29, 1945 and as a basis of his proceeding, alleges as follows:

1. Petitioner is a resident of the State of Cali-

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\* Page numbering appearing at foot of page of original certified Transcript of Record.

fornia and resides at No. 1200 Laurel Drive, Beverly Hills, California. The return for the period here involved was filed with the Collector of Internal Revenue, Sixth District of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") presumably was mailed to the petitioner on June 29, 1945. [3]

3. The taxes in controversy are income taxes for the calendar year 1943 and are in the sum of \$117,688.82.

4. The determination of deficiency is based upon the following errors:

(a) The determination that petitioner in the year 1942 received a dividend of \$239,059.58 from Samuel Goldwyn Studios instead of \$104,610.58.

(b) The determination that a distribution of \$203,091.00 by Samuel Goldwyn Studios did not reduce accumulated earnings and profits in the fiscal year ending June 30, 1931, but reduced available accumulated earnings and profits of \$68,641.98 and paid in capital of \$134,449.02, in the fiscal year ending June 30, 1933.

5. The facts upon which petitioner relies as the basis of this proceeding are as follows:

(a) Samuel Goldwyn Studios, a corporation organized under the laws of the State of California, maintained its accounts and filed its income tax returns on the accrual basis of accounting for a fiscal year ended June 30. On June 30, 1930, the earnings and profits of [4] such corporation, then known as United Artists Studio Corporation, accumulated after February 28, 1913 including earn-

ings and profits for the year ending June 30, 1930, were \$104,877.84. The net earnings and profits of such corporation for the fiscal year ending June 30, 1931 were \$181,521.58. The accumulated earnings and profits, including earnings and profits for the year ending June 30, 1931 (without diminution by reason of distribution made during the said taxable year) totaled \$286,399.42.

(b) On September 11, 1930, the Board of Directors of Samuel Goldwyn Studios declared a cash dividend of \$203,091 at the rate of \$21 a share to stockholders of record as of September 10, 1930, payable December 15, 1930. Such dividend was paid as follows: \$185,327.17 on May 27, 1933 and \$17,763.83 on June 29, 1933.

(c) On December 31, 1942 Samuel Goldwyn Studios distributed to petitioner the sum of \$800,000. At the time of such distribution the earnings and profits of such corporation accumulated after February 28, 1913, including earnings and profits for the taxable year (without diminution by reason of any distribution made during the year) totaled \$104,610.56. [5]

(d) The respondent has determined that \$239,059.58 of the amount distributed by Samuel Goldwyn Studios on December 31, 1942 constitutes a distribution from accumulated earnings and profits. Such determination results from the assumption that the distribution described in Paragraph 5(b) hereof did not reduce accumulated earnings and profits in the fiscal year ending June 30, 1931, but reduced available accumulated earnings and profits



of \$68,641.98 and paid-in capital of \$134,449.02 in the fiscal year ending June 30, 1933.

Wherefore, your petitioner prays that this Court may hear this proceeding and determine that the earnings and profits of Samuel Goldwyn Studios in the fiscal year ended June 30, 1931 should be reduced in the sum of \$203,091; that the petitioner received a dividend of \$104,610.56 instead of \$239,059.58, from Samuel Goldwyn Studios; that there is no deficiency, and for such other and further relief in the premises as this Court may deem just and proper.

Respectfully submitted,

/s/ FERDINAND TANNENBAUM,  
Counsel for Petitioner. [6]

State of California,  
County of Los Angeles—ss.

Samuel Goldwyn, being duly sworn, deposes and says: That he is the petitioner named in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to these matters he believes it to be true.

Sworn to before me this 13th day of July, 1945.

/s/ (Illegible)

/s/ (Illegible)

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires February 25, 1946. [7]

## EXHIBIT A

Treasury Department  
Internal Revenue Service  
New York 1, N. Y.

29 June 1945.

Office of Internal Revenue Agent-in-Charge,  
Upper N. Y. Division,  
U. S. Parcel Post Bldg.

Mr. Samuel Goldwyn,  
1270 Sixth Avenue,  
New York 20, N. Y.

Dear Mr. Goldwyn:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1943, discloses a deficiency of \$117,-688.82, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, 341 Ninth Avenue, New York 1, N. Y., for the attention of: UNY:CONF:JKH. The signing and fil-



ing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,  
Commissioner.

By DANIEL A. BOLICH,  
Internal Revenue Agt. in  
Charge.

Enclosures: Statement, Form of Waiver. [8]

STATEMENT

Tax Liability for the Taxable Year Ended  
December 31, 1943

	Liability	Assessed and/or Withheld	Deficiency
Income Tax	\$2,546,609.98	\$2,428,921.16*	\$117,688.82

\* See tax computation schedule for details.

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated April 22, 1944; to the supplemental report of examination dated February 6, 1945; and to the statement of adjustments (a copy of which was transmitted to you on June 13, 1945.)

**Taxable Year Ended December 31, 1942****Adjustments to Net Income**

Net income as disclosed by return.....	\$ 3,590,628.87	
Unallowable deductions and additional income		
(a) Dividends .....	\$ 239,059.58	
(b) Net gain from sale or ex- change of capital assets.....	1,023,219.40	1,262,278.98
Net income adjusted.....		\$ 4,852,907.85

**Taxable Year Ended December 31, 1942****Explanation of Adjustments**

(a) Of the total dividend of \$800,000.00 paid to you by Samuel Goldwyn Studios, the amount of \$239,059.58 is held to constitute taxable income. Inasmuch as you excluded the entire dividend received as an alleged return of capital, your net income has been increased by \$239,059.58.

(b) You reported a net gain from the sale or exchange of capital assets of \$3,564,558.65, whereas an examination discloses that you derived a recognized gain of \$4,587,778.05, the details of which were previously submitted to you on May 27, 1944, and February 23, 1945. You have previously agreed to this adjustment, an increase of \$1,023,219.40 in net income.

## Computation of Alternative Tax

Net income adjusted .....	\$ 4,852,907.85
Minus: Net long-term gain .....	4,572,669.43
Ordinary net income.....	280,238.42
Surtax net income .....	280,238.42
Less: Earned income credit.....	1,400.00
<hr/>	
Net income subject to normal tax.....	\$ 278,838.42
Normal tax at 6% on \$278,838.42.....	\$ 16,730.31
Surtax on \$280,238.42 .....	204,935.50
<hr/>	
Partial tax .....	\$ 221,665.81
Plus: 50% of net long-term gain.....	2,286,334.72
<hr/>	
Alternative tax .....	\$ 2,508,000.53

## Taxable Year Ended December 31, 1942

## Computation of Tax

Net income adjusted .....	\$ 4,852,907.85
Surtax net income .....	4,852,907.85
Less: Earned income credit.....	1,400.00
<hr/>	
Net income subject to normal tax.....	\$ 4,851,507.85
Normal tax at 6% on \$4,851,507.85.....	291,090.47
Surtax on \$4,852,907.85 .....	3,954,524.44
<hr/>	
Total tax (ordinary tax).....	\$ 4,245,614.91
Total tax (alternative tax).....	2,508,000.53
Correct income tax liability .....	2,508,000.53

No assessment of the tax for the year 1942 has been made due to the forgiveness feature of the Current Tax Payment Act of 1943 and the above amount has been considered in the determination of the tax due for the year ended December 31, 1943.



## Taxable Year Ended December 31, 1943

## Adjustments to Net Income

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return.....	\$176,304.83	\$492,827.93
Unallowable deductions and additional income		
(a) Net profit from business.....	966.10	966.10
(b) Contributions .....		8,922.00
Net income adjusted.....	<u>\$177,270.93</u>	<u>\$502,716.03</u>

## Taxable Year Ended December 31, 1943

## Explanation of Adjustments

(a) In determining your net profit from business, you deducted \$1,922.47 as depreciation on equipment, whereas an examination discloses that you sustained depreciation of \$956.37, the details of which were previously submitted to you under date of May 27, 1944. The difference of \$966.10 has, therefore, been disallowed as a deduction. You have previously agreed to this adjustment.

(b) You deducted contributions of \$8,922.00 in computing your net profit from business. It is held that such contributions do not constitute an allowable deduction in computing your victory tax net income. You have previously agreed to this adjustment.

## Computation of Income and Victory Tax

Income tax net income.....		\$177,270.93
Less:		
Personal exemption .....	\$1,200.00	
Credit for dependents .....	350.00	1,550.00
		<hr/>
Balance (surtax net income).....		\$175,720.93
Less: Earned income credit.....		1,400.00
		<hr/>
Net income subject to normal tax.....		\$174,320.93
Normal tax at 6% on \$174,320.93.....		10,459.26
Surtax on \$175,720.93 .....		119,473.95
		<hr/>
Total income tax .....		\$129,933.21
Victory tax net income.....	\$502,716.03	
Less: Specific exemption .....	624.00	
		<hr/>
Income subject to victory tax .....	\$502,092.03	
Victory tax before credit:		
5% of \$502,092.03 .....	25,104.60	
Less: Victory tax credit.....	600.00	
		<hr/>
Net victory tax .....		\$ 24,504.60
		<hr/>
Net income tax and victory tax.....	(a) \$	154,437.81
Income tax for 1942.....	(b)	2,508,000.53
Amount of (a) or (b) whichever is larger.....		2,508,000.53
Forgiveness feature:		
Amount of (a) or (b) whichever is smaller .....	\$154,437.81	
Amount forgiven ( $\frac{3}{4}$ of \$154,437.81) .....	115,828.36	*38,609.45
		<hr/>
Total income and victory tax liability.....		\$2,546,609.98
* Amount forgiven.		

Less :

Income and victory tax withheld by employer .....	\$ 4,913.80	
Income tax paid on 1942 income.....	897,425.42	
Income tax paid on 1943 income on account of declaration of esti- mated tax .....	894,968.52	
Income tax assessed on 1943 returns:		
Orig'l acct. No.		
301214 .....	\$ 35,818.82	
Add'l acct. No. 519011,		
July 7, 1944 list.....	584,301.01	
Add'l acct. No. 519008,		
Apr. 27, 1945 list....	11,493.59	
	<hr/>	631,613.42
	<hr/>	\$ 2,428,921.16
Deficiency .....		<hr/>
		\$ 117,688.82

[Endorsed]: T.C.U.S. Filed July 19, 1945. [14]

[Title of Tax Court and Cause.]

### ANSWER

Comes now the Commissioner of Internal Revenue, through his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition heretofore filed in this proceeding, admits, denies and avers as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits that notice of deficiency (a copy of which is attached to the petition and marked Exhibit "A") was mailed to the petitioner on June



29, 1945, but denies the remaining allegations of paragraph 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar year 1943 and are in the sum of \$117,688.82.

4. (a) and (b). Denies the allegations of error contained in subparagraphs (a) and (b) of paragraph 4 of the petition.

5. (a). Admits the allegations of the first sentence of subparagraph (a) of paragraph 5 of the petition, but denies the remaining allegations of subparagraph (a) of paragraph 5 of the petition.

5. (b). Admits the allegations of fact contained in subparagraph (b) of paragraph 5 of the petition.

5. (c). Admits that in December, 1942, Samuel Goldwyn Studios distributed to petitioner the sum of \$800,000, but denies the remaining allegations of subparagraph (c) of paragraph 5 of the petition.

5. (d). Admits that respondent has determined that \$239,059.58 of the amount distributed by Samuel Goldwyn Studios in December, 1942 constitutes a distribution from accumulated earnings and profits, but denies the remaining allegations of the first sentence of subparagraph (d) of paragraph 5 of the petition. In respect to the remaining allegations of subparagraph (d) of paragraph 5 of the petition, respondent avers that same are neither pertinent nor competent in regard to the issues

involved, and that he is not called upon to either affirm or deny said allegations.

Denies generally and specifically each and every allegation of the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved and the appeal denied.

/s/ J. P. WENCHEL,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

E. C. ALGIRE,  
Division Counsel,  
WILLIAM A. SCHMITT,  
Special Attorney, Bureau of  
Internal Revenue.

WAS:lmw 8-11-45 [16]

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[Title of Tax Court and Cause.]

### AMENDED PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in its notice of deficiency dated June 29, 1945 and as a basis of his proceeding, alleges as follows:

1. Petitioner is a resident of the State of California and resides at No. 1200 Laurel Drive, Beverly Hills, California. The return for the period



here involved was filed with the Collector of Internal Revenue, Sixth District of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") presumably was mailed to the petitioner on June 29, 1945. [17]

3. The taxes in controversy are income taxes for the calendar year 1943 and are in the sum of \$117,688.82.

4. The determination of deficiency is based upon the following errors:

(a) The determination that petitioner in the year 1942 received a dividend of \$239,059.58 from Samuel Goldwyn Studios instead of \$104,610.58.

(b) The determination that a distribution of \$203,091.00 by Samuel Goldwyn Studios did not reduce accumulated earnings and profits in the fiscal year ending June 30, 1931, but reduced available accumulated earnings and profits of \$68,641.98 and paid-in capital of \$134,449.02, in the fiscal year ending June 30, 1933.

5. The facts upon which petitioner relies as the basis of this proceeding are as follows:

(a) Samuel Goldwyn Studios, a corporation organized under the laws of the State of California, maintained its accounts and filed its income tax returns on the accrual basis of accounting for a fiscal year ended June 30. On June 30, 1929, the earnings and profits of such corporation, then known as United Artists Studio Corporation, Ltd., accumulated after February 28, 1913 including earnings and profits for [18] the year ending June 30, 1929, were \$104,877.84. The net earnings and prof-

its of such corporation for the fiscal year ending June 30, 1930 were \$181,521.58. The accumulated earnings and profits, including earnings and profits for the year ending June 30, 1930 (without diminution by reason of distribution made during the said taxable year) totaled \$285,399.42.

(b) On September 11, 1930, the Board of Directors of Samuel Goldwyn Studios, then known as United Artists Studio Corporation, Ltd., declared a cash dividend of \$203,091.00 at the rate of \$21.00 a share to stockholders of record as of September 10, 1930, payable December 15, 1930. Such dividend was distributed to the stockholders on September 17, 1930.

(c) On December 31, 1942 Samuel Goldwyn Studios distributed to petitioner the sum of \$800,000. At the time of such distribution the earnings and profits of such corporation accumulated after February 28, 1913, including earnings and profits for the taxable year (without diminution by reason of any distribution made during the year) totaled \$104,610.56.

(d) The respondent has determined that \$239,059.58 of the amount distributed by Samuel Goldwyn Studios on [19] December 31, 1942 constitutes a distribution from accumulated earnings and profits. Such determination results from the assumption that the distribution described in Paragraph 5 (b) hereof did not reduce accumulated earnings and profits in the fiscal year ending June 30, 1931, but reduced available accumulated earnings and profits of \$68,641.98 and paid-in capital of \$134,449.02 in the fiscal year ending June 30, 1933.

Wherefore, your petitioner prays that this Court may hear this proceeding and determine that the earnings and profits of Samuel Goldwyn Studios in the fiscal year ended June 30, 1931 should be reduced in the sum of \$203,091; that the petitioner received a dividend of \$104,610.56 instead of \$239,059.58, from Samuel Goldwyn Studios; that there is no deficiency, and for such other and further relief in the premises as this Court may deem just and proper.

Respectfully submitted,

/s/ FERDINAND TANNENBAUM,  
Counsel for Petitioner.

(Duly Verified.)

[Clerk's Note: This exhibit has already been reproduced as Exhibit A on pages 7-15 and for economy is not here reproduced.]

[Endorsed]: T.C.U.S. Filed Nov. 4, 1946. [20]

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[Title of Tax Court and Cause.]

### ANSWER TO AMENDED PETITION

Comes now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition heretofore filed in this proceeding, admits, denies, and avers as follows:

1. Admits the allegations contained in paragraph 1 of the amended petition.
2. Admits that the notice of deficiency (a copy



of which is attached to the amended petition and marked Exhibit A) was mailed to the petitioner on June 29, 1945, but denies the remaining allegations contained in paragraph 2 of the amended petition.

3. Admits that the taxes in controversy are income taxes for the calendar year 1943 and are in the sum of \$117,688.82.

4(a) and (b). Denies the allegations of error contained in subparagraphs (a) and (b) of paragraph 4 of the amended petition.

5(a). Admits the allegations of the first sentence of subparagraph (a) of paragraph 5 of the amended petition, but denies the remaining allegations of subparagraph (a) of paragraph 5 of the amended petition. [28]

5(b). Admits the allegations contained in the first sentence of subparagraph (b) of paragraph 5 of the amended petition. Admits that such dividend was distributed, but avers that it was distributed in May, 1933, and denies that it was distributed on September 17, 1930, as alleged in the last sentence of subparagraph (b) of paragraph 5 of the amended petition.

5(c). Admits that in December, 1942, Samuel Goldwyn Studios distributed to petitioner the sum of \$800,000, but denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the amended petition.

5(d). Admits that respondent has determined that \$239,059.58 of the amount distributed by Samuel Goldwyn Studios in December, 1942, constitutes a distribution from accumulated earnings and prof-

its, but denies the remaining allegations of the first sentence of subparagraph (d) of paragraph 5 of the amended petition. In respect of the remaining allegations of subparagraph (d) of paragraph 5 of the amended petition, respondent avers that same are neither pertinent nor competent in regard to the issues here involved, and that he is not called upon to either affirm or deny said allegations.

6. Denies generally and specifically each and every allegation of the amended petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved and the appeal denied.

J. P. WENCHEL,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

E. C. ALGIRE,  
Division Counsel,

WILLIAM A. SCHMITT,  
Special Attorney, Bureau of  
Internal Revenue.

[Endorsed]: T.C.U.S. Filed Nov. 7, 1946. [29]

## 9 T. C. No. 71

## The Tax Court of the United States

Samuel Goldwyn, Petitioner, v. Commissioner of Internal Revenue, Respondent. Docket No. 8770. Promulgated September 30, 1947.

Corporation X on September 11, 1930, declared a dividend payable December 15, 1930, which was charged to surplus and credited to a Dividends Payable account, in which appeared the amount due each shareholder. There was no crediting to the shareholders' individual accounts until 1933 when on their instructions most of the dividend was applied to their debts to the corporation. In the fiscal year ended June 30, 1931, the corporation had accumulated earnings and profits sufficient to pay the dividend; in 1933 it did not. In 1942 it made a distribution in redemption of shares, and computed earnings to reflect a reduction of surplus in 1931 by the amount of the dividend.

1. The corporation's surplus, held, reduced in the fiscal year 1931 by virtue of the declaration of the dividend.

2. The crediting and control exercised by the shareholders over the dividend, held, to have effected a distribution in the fiscal year 1931, which a fortiori reduced surplus.

Ferdinand Tannenbaum, Esq., Z. N. Diamond, Esq., and George Lewis, Esq., for the petitioner.

William A. Schmitt, Esq., for the respondent.

The Commissioner determined a deficiency of \$117,688.82 in petitioner's income tax for 1943 in



part by adding to income reported for 1942 a portion of a dividend which petitioner had excluded as a return of capital. The parties have stipulated two amounts representing the portion taxable as a distribution of earnings and profits according to whether the distribution of a prior dividend reduced earnings and profits in the fiscal year 1931 or 1933. Petitioner contends that the declaration of the dividend, the charging of it to surplus and the crediting of it to Dividends Payable in the fiscal year 1931 reduced its surplus in 1931; respondent argues that no distribution occurred until the dividend was credited on the shareholders' indebtedness to the corporation in 1933, and that because of this surplus was not reduced in 1931.

### FINDINGS OF FACT

Petitioner, an individual residing in Beverly Hills, California, filed his income tax returns for 1942 and 1943 with the collector of internal revenue for the sixth district of California. For many years he has been actively engaged in the motion picture industry, and on December 14, 1942, became owner of all the outstanding shares of Samuel Goldwyn Studios, a California corporation (hereinafter called Studios). Prior to that time and on November 30, 1942, Studios' board of directors had resolved to reduce the par value of its capital stock by \$386,840 from \$483,550 to \$96,710, represented by shares of a par value of \$10 each to be exchanged for the outstanding shares of a par value of \$50 each, and had further resolved to distribute \$800,000 to shareholders out of surplus, then amounting

to \$870,390. Pursuant to this resolution Studios distributed \$800,000 to petitioner on December 31, 1942.

Studios was organized in 1926 by Joseph M. Schenck, Mary Pickford and Douglas Fairbanks, and was originally known as United Artists Studio Corporation. It acquired 18 acres of land in Hollywood, California; erected on it office buildings, stages and other structures which it [31] equipped for the production of motion pictures on a large scale, and engaged in the rental of these facilities to producers of pictures, principally its own shareholders. In 1930 it was controlled by Feature Productions, Inc., which owned 66 per cent of its outstanding shares and had agreed to purchase 23 per cent more. All shareholders were represented on Studios' board of directors and took an active part in its affairs. They were billed weekly for use of the facilities and for services and materials furnished, and made payment when Studios needed funds. For each shareholder a running account was maintained on the books, reflecting debit and credit entries. Studios and Feature Productions, Inc., had the same manager, and the officers and directors of both comprised largely the same individuals.

Studios maintained its accounts and filed its income tax returns on an accrual basis for a fiscal year ended June 30th. On June 30, 1930, its earnings and profits accumulated since February 28, 1913, amounted to \$286,399.42, of which \$181,521.28 were earnings and profits for the fiscal year 1930. On September 11, 1930, the board of directors:



Resolved that a cash dividend of Twenty One Dollars (\$21.00) per share be, and the same hereby is, declared to all shareholders of this corporation of record as of September 10, 1930, and that said dividend be paid on December 15, 1930.

Resolved Further that the treasurer of this corporation be, and he hereby is, authorized and instructed to give notice of such dividend and to pay the same when due.

Pursuant to this resolution an entry of even date was made in the corporation's journal, debiting surplus with \$203,091 (as corrected later by a reversing entry which eliminated \$1,565.67 erroneously credited to Samuel Goldwyn, Inc., Ltd.), and crediting each of the 12 shareholders with his [32] proportionate share of the amount declared as a dividend. The individuals' shares were likewise credited in the ledger to an account styled Dividends Payable. The amounts so entered in the journal and in the Dividends Payable account of the ledger as credits to the shareholders individually, however, were not credited in their individual running accounts with the corporation, and hence the balances in the latter did not reflect the dividend credits. Of the 12 shareholders 7 nominally held 1 qualifying share each on account of another, and 1 was a corporation of Mary Pickford and Douglas Fairbanks. On September 17 and December 15, 1930, the net indebtedness of the shareholders to Studios was \$85,865.06 and \$90,818.87, respectively, distributed as follows:

	Sept. 17, 1930	Dec. 15, 1930
Feature Productions Inc., debit.....	\$ 4,133.41	\$83,986.05
Douglas Fairbanks, credit .....	5,143.19	2,459.27
Mary Pickford Fairbanks, debit.....	21,913.27	1,324.69
Samuel Goldwyn, Inc., debit.....	64,961.57	3,948.86

The amounts of the shareholders' indebtedness to Studios varied greatly from time to time. Prior to June, 1933, the maximum indebtedness of Feature Productions was \$240,783.44 on February 18, 1933; of Mary Pickford \$40,471 on December 31, 1932; of Samuel Goldwyn, Inc., \$116,299.98 on January 14, 1933; of Douglas Fairbanks \$22,644.12 on July 23, 1932.

On Studios' income tax return for the fiscal year 1931, the dividend was reported as declared on September 10, 1930, but unpaid at the end of the year, and the amount was shown under "Other Liabilities" as "Dividends Payable." During the fiscal years ended June 30, 1931, 1932 and 1933 the corporation sustained statutory net losses of \$97,-650.97, \$28,475.54 and \$101,349.36, respectively. Cash payment of the dividend declared in 1930 [33] was not made, but on June 27, 1933, Feature Productions, Inc., instructed the corporation by letter to apply to its indebtedness to the corporation \$136,327.17, to which the dividend declaration entitled it, and \$28,000 of the dividend due to Mary Pickford and Douglas Fairbanks who had assigned this part to it. On the same date shareholders Samuel Goldwyn, Inc., and Abraham Lehr similarly directed that \$20,979 and \$21 of the dividend due to them respectively, likewise be applied on debts to the corporation. By journal entries dated

May 27, 1933, the Dividends Payable account was debited with \$203,091, and credits were entered as follows:

Accounts Receivable

Feature Prod., Inc., Ltd.....	\$164,327.17
Samuel Goldwyn, Inc., Ltd.....	21,000.00
Mary Pickford Fairbanks .....	6,649.87
Douglas Fairbanks .....	5,695.03

Accounts Payable

Mary Pickford Fairbanks .....	\$ 2,232.05
Douglas Fairbanks .....	3,186.88

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\$203,091.00

Explanation: To charge Accounts Receivable from stockholders against adjusted Dividends Payable to them and to credit any excess of dividends over such receivables to Accounts Payable. This entry per instructions of A. M. Brentinger. [manager]

An appropriate journal entry likewise recorded the assignment to Samuel Goldwyn, Inc., of \$28,000 of dividends due Mary Pickford and Douglas Fairbanks "leaving amount due last two named \$17,763.83." Only entries relating to this transfer were entered in the ledger account Dividends Payable. A credit balance of \$203,091 appears in the account prior to the fiscal year 1933; there is no balance as of the end of that year. Under date of May 27, 1933, Studios sent a notice to Feature Productions, Inc., [34] that its account had been credited with \$164,327.17 "amount of dividend due you" and sent a like notice of a credit of \$21,000 to Samuel Goldwyn, Inc.

On its income tax return for the fiscal year 1933 Studios reported as a liability at the beginning of the year dividends payable of \$203,091; at the end



of the year, none. Mary Pickford and Douglas Fairbanks reported receipt of the dividends in their income tax returns for 1933, attaching notes explanatory of the assignment of the \$28,000 to Feature Productions, Inc. In its consolidated return for 1931 Art Cinema Corporation, of which Feature Productions, Inc., was a subsidiary, reported receipt of the dividend of \$136,327.17.

In his income tax return for 1942 petitioner reported the dividend of \$800,000 paid to him by Studios as a return of capital. The Commissioner determined that \$239,059.58 constituted taxable income. The parties have stipulated that such amount was a distribution of accumulated earnings and profits if accumulated earnings and profits and paid-in capital of the corporation were reduced by the dividend of \$203,091 in the fiscal year ended June 30, 1933, but if accumulated earnings and profits were reduced by the dividend in the fiscal year ended June 30, 1931, then only \$104,610.56 of the \$800,000 dividend of 1942 constituted a distribution of earnings and profits.

Distribution of the dividend declared September 11, 1930, was made in the fiscal year ended June 30, 1931, and Studios' accumulated earnings and profits were reduced by the amount of it in that year. Of the dividend of \$800,000 received by petitioner in 1942 \$104,610.56 constituted a distribution of earnings and profits. [35]

### OPINION

Johnson, Judge: Petitioner, as sole shareholder of Studios, received in 1942 a dividend of \$800,000. The parties are agreed that \$104,610.56 of this

amount were earnings and profits if the dividend of \$203,091, declared September 11, 1930, reduced Studios' accumulated earnings and profits in the fiscal year ended June 30, 1931, and that \$239,059.58 thereof were earnings and profits if, as the Commissioner determined, the prior dividend reduced accumulated earnings, profits and paid-in capital in the fiscal year ended June 30, 1933. Studios, be it noted, had more than ample earnings and profits in the fiscal year 1931 to pay the dividend in full, but subsequent losses had reduced this accumulation by June, 1933. As a consequence the amount of earnings and profits available in 1942 for payment of the \$800,000 dividend depends upon the amount absorbed by the prior dividend, and that in turn depends upon whether the prior dividend reduced earnings and profits in the fiscal year 1931 or in the fiscal year 1933.

Contending that distribution occurred in the fiscal year 1931, petitioner stresses that pursuant to the declaration of September 11, 1930, the amount of the dividend was charged to surplus; apportioned among the several shareholders, and individually credited to them on the corporate books; that consistently Studios reported the amount on its income tax return for 1931 as "Dividends Payable," and even if the shareholders be deemed to have postponed distribution by their failure to withdraw, still the declaration vested them with a right to it which of itself reduced the corporate surplus. Respondent argues to the contrary that

the dividend was not distributed until 1933; was reported by shareholders as received [36] in 1933, and that time of actual payment fixes the date on which the corporate earnings and profits are reduced, as was held in *Emily D. Proctor*, 11 B.T.A. 235, and cases therein cited.

It was recognized in the *Proctor* case that:

\* \* \* as between a stockholder and a corporation, the declaration of a dividend brings into existence the status of a debtor and creditor, and the earnings and profits of the corporation to the extent of such a declaration are separate from the other property of the corporation. *United States v. Guinzburg*; *supra* [278 Fed. 363]; *Plant v. Walsh*, *supra* [280 Fed. 722]; and *Appeal of A. H. Stange*, *supra* [1 B.T.A. 810].

This rule has been applied in holdings that a corporation's invested capital is reduced by the amount of a dividend declared, *Gregg Co., Ltd.*, 25 B.T.A. 81; *Belmont Iron Works*, 9 B.T.A. 216; *W. E. Caldwell Co.*, 6 B.T.A. 47, even in the form of promissory notes, *R. E. Burdick*, 24 B.T.A. 1297, and that until payment the amount of a declared dividend is borrowed capital owed to the shareholders, *Bulger Block Coal Co.*, 71 Ct. Cl. 636; 48 Fed. (2d 675. The law of California here applicable conforms to the general rule, and was succinctly stated in *Smith v. Taecker*, 133 Cal. App. 351; 24 Pac. (2d) 182, as follows:



\* \* \* the mere declaration of a dividend creates debts against the corporation in favor of the stockholders as individuals. Where the resolution declares a dividend on a future date, title to said dividend vests in the stockholder on the date fixed in the resolution.

From this it follows that in the fiscal year 1931 Studios became legally bound to pay the declared dividend of \$203,091 to its shareholders; that this amount could no longer be listed among its assets but represented an indebtedness, and that surplus was thereby decreased. The evidence discloses that recognition was given by appropriate book entries to these consequences: the surplus account was debited with the amount and a corresponding [37] credit was entered in a liability account styled Dividends Payable, on which the part of the total dividend due to each shareholder was individually indicated.

Respondent argues nonetheless that the date of payment or distribution to the shareholders fixes the year in which surplus was decreased, and because there was no transfer of the amounts due the several shareholders from the Dividends Payable account to their respective individual accounts until the fiscal year 1933, he insists that the latter year is the year of distribution and hence the year in which surplus was reduced under *Mason v. Routzahn*, 275 U. S. 175, and *United States v. Phillips*, (C.C.A. 3rd Cir.), 24 Fed. (2d) 195, as construed in the Proctor opinion, *supra*. In con-

sidering this argument we stress as of crucial significance that those cases involve the liability of the recipient shareholder for tax on a dividend and not the effect of the declaration or payment on the corporation's own financial structure. We accept as settled that "the date of payment, not the date of the declaration of the dividend, is the date of distribution", *Mason v. Routzahn*, *supra*. But assuming arguendo that the shareholders did not receive the dividend until the corporation's fiscal year 1933, we do not regard as applicable to the issue in this case the rule that a shareholder, whether on the cash or accrual basis, is not to be treated as receiving a dividend until his existing right to it has been satisfied by payment, actual or constructive. That rule is one of convenience rather than of strict law, as was pointed out by the Seventh Circuit Court of Appeals in *Commissioner v. American Light & Traction Co.*, 156 Fed. (2d) 398, holding a shareholder on an accrual basis taxable in 1937 on a dividend actually paid in 1937 although his absolute right to it had [38] ripened in 1936 by virtue of the declaration. And while the Board of Tax Appeals in the *Proctor* case, *supra*, treated a special dividend as paid from available surplus although a regular dividend, previously declared but unpaid, would have absorbed such surplus, it expressly recognized that the declaration brought into existence the relation of debtor to the shareholders, as appears from the above quoted excerpt, and then reasoned:

\* \* \* we think it beside the point that the corporation may for a profit and loss statement or accounting purposes, or as showing the status existing between the corporation and its shareholders, show its earnings and profits to be reduced by a declaration of a dividend not then paid. The dividend declared must give way to the dividend paid in so far as the taxability of the same in the hands of the stockholders is concerned. It is to tax that which is first distributed by payment rather than declaration that the statute seeks to and does reach. [Underscoring supplied].

In this proceeding, however, we are not concerned with the taxability of the dividend declared on September 11, 1930, in the hands of the stockholders, but only with the effect of that dividend on corporate surplus. In the fiscal year 1931 the amount of it was properly charged against surplus; this charge remained unreversed thereafter, and whatever may have been the correct year for taxing the dividend to the stockholders, we are of opinion and hold that the accumulated earnings and profits of Studios were reduced in the fiscal year 1931 by the declared dividend of \$203,091.

In reaching the foregoing conclusion, we have assumed *arguendo* that the dividend declared on September 11, 1930, was not distributed until the fiscal year 1933, as respondent argues and petitioner denies. A close review of the facts established convinces us not only that surplus was re-



duced but also that the shareholders received the dividend in the fiscal year 1931, and the decision reached is thus fortified. By the declaration, the dividend was payable on December 15, 1930; surplus was charged with the amount as of [39] the date of the declaration, and each shareholder's part was credited individually in the Dividends Payable account. Although the shareholders were indebted to Studios and the balances in their accounts varied frequently, there was no transfer to their individual accounts until June 27, 1933, when they directed the corporation by letter to credit a part to the debts, and the remainder was then credited for the first time to their individual accounts. Respondent argues that only then a distribution was made whereby the corporate earnings and profits were reduced. He stresses that December 15, 1930, has no significance "because absolutely nothing was done by anybody on that date," not even a crediting of the dividend to the shareholders' individual accounts. It is equally true, however, that nothing was done from September 11, 1930, date of the declaration, until June 27, 1933, when the shareholders directed the disposition to be made of the dividends, and among such directions, which were immediately carried out, was an assignment of \$28,000 of the dividend due Mary Pickford and Douglas Fairbanks for application to the debt of Feature Productions, Inc. Obviously on June 27, 1933, the shareholders had over the dividends an unqualified control which the corporation recog-



nized, and if “nothing was done” after the entries made at the time of the declaration, we must assume that the shareholders had the same absolute control in the fiscal year 1931 that they had in the fiscal year 1933.

A dividend credited to a shareholder and unqualifiedly subject to his command is taxable to him as distributed in the year of the credit whether or not actually withdrawn, *Baker v. United States*, 84 Ct. Cl. 428; 17 Fed. Supp. 976; *Jacobus v. United States*, 80 Ct. Cl. 357; 9 Fed. Supp. 41; *Hadley v. Commissioner* (D. C. App.), 36 Fed. (2d) 543; *Brooks v. Commissioner* [40] (C.C.A., 4th Cir.), 35 Fed. (2d) 178; *E. Gordon Perry*, 28 B.T.A. 497; cf. *Avery v. Commissioner*, 292 U. S. 210, for a shareholder “cannot postpone his income taxes by leaving his dividend with his corporation.” *A. D. Saenger, Inc. v. Commissioner* C.C.A., 5th Cir., 84 Fed (2d) 23; certiorari denied, 299 U. S. 577. And although the shareholders here erroneously reported the dividend on their income tax returns for 1933, such treatment by them is immaterial to the issue, *Valley Lumber Company of Lodi*, 43 B.T.A. 423; the corporation, on the contrary, properly listed it as a liability in its return for the fiscal year 1931. Payments by credit have been held sufficient to support the corporation’s claim for a dividends paid credit, *Valley Lumber Company of Lodi*, *supra*; *Atlantic Land Co.*, 43 B.T.A. 74; *Valley Tractor & Equipment Co.*, 42 B. T.A. 311.

\* \* \* The test in such cases is whether the right of the stockholder has so matured as to subject the dividend credited on the corporation's books to the complete control of the stockholder and remove it from the control of the corporation. Whenever that test is satisfied, the book credit is regarded as the equivalent of cash and constitutes payment of the dividend. \* \* \* [R. H. Bouligny, Inc., 45 B.T. A. 456].

We are of opinion that the test has been satisfied by the crediting of the dividend to the shareholders on September 11, 1930, and as it was payable on December 15, 1930, the shareholders had complete control from that date, as is apparent from their directed disposition of the dividend in 1933 without further corporate action. The distribution, therefore, was made in the fiscal year ended June 30, 1931, and a fortiori the corporate surplus was then reduced.

In accordance with the stipulation we find that \$104,610.56 of the dividend of \$800,000 received by petitioner in 1942 constituted a distribution of earnings and profits.

Reviewed by the Court.

Decision will be entered under Rule 50.

Hill, J. dissents. [41]

Disney, J., dissenting: The majority view has two bases: First, it is held that the declaration of a dividend in 1930 and debit thereof to surplus on the corporation's journal created the relation

of debtor and creditor between the corporation and the stockholders, and decreased the surplus; that, therefore, the stockholder, for purposes of the question here, may be considered as receiving the dividend though there has been no payment, either actual or constructive, that the cases requiring such payment, actual or constructive, apply only to questions of taxability of the dividend in the hands of the stockholders, and not here, where the question is to effect of the dividend on corporate surplus, and that the dividend declared in 1930 reduced the accumulated earnings and profits. Second, it is held, in the alternative, that in fact there was constructive receipt of the dividend by the stockholders, the dividend declared having been entered on the corporation's "dividend payable" account on the corporate ledger, where each stockholder's proportionate part was credited in his name, although the amounts shown in journal and ledger as credits to the shareholders individually, were not credited in their individual running accounts with the corporation. (Each shareholder had a running account, reflecting debit and credit entries and the amounts of shareholder's indebtedness to the corporation varied greatly, but the dividend was not reflected on such accounts.)

I think it clear beyond controversy that the alternative basis of decision is without foundation. Quoting *Valley Tractor & Equipment Co.*, 42 B. T.A. 311, the majority opinion recognizes that the test is complete control by the stockholder over the



dividend, and removal of control from the corporation. It is obvious that the corporation had not lost, nor the [42] stockholder acquired, control over the dividend. Credit to "dividends payable" on the corporate books transferred no more control to the stockholder than an entry of "bills payable" or "notes payable" transfers control to the payee. The matter is solely that of intra-corporation book-keeping. Logically, a showing is required that the stockholder could get his money at any time without possibility of denial by the corporation. This is indicated by the cases relied on by the majority. In the Valley Tractor case checks were issued to the shareholders. In Valley Lumber Company of Lodi, 43 B.T.A. 423, it was shown that the dividend was credited to the individual accounts of the shareholders and that on such accounts none of the stockholders was indebted to the corporation. In Atlantic Land Co., 43 B.T.A. 74, the dividend was credited to the stockholders "without restrictions as to withdrawals," and the stockholders were informed by the president that the dividend was available to any shareholder who desired to receive it forthwith, and that the amounts would be credited to each without restrictions as to withdrawals. In R. H. Bouligny, Inc., 45 B.T.A. 456, cited by the Valley Tractor case, the dividend was immediately credited to the personal accounts of the stockholders "who thereupon had the unrestricted right to withdraw the same." The personal accounts had been maintained for a long time and the practice



had been to credit thereto and for the stockholders to make withdrawals as they needed money or the financial condition of the corporation permitted. In my opinion, it is just such a showing that is necessary to establish constructive receipt of a dividend, and such showing is wholly absent here. The [43] stockholders had no control whatever over the "dividends payable" account. The fact that their names appeared thereon is of no import. In so far as the majority opinion relies on constructive receipt of dividend, I regard it altogether erroneous.

Primarily, however, the majority are of the view that the declaration of the dividend "vested them [the stockholders] with a right to it which of itself reduced the corporate surplus." I can subscribe to no such idea. Under section 115(c) of the Internal Revenue Code, a dividend is a "distribution" out of earnings and profits; therefore, until the earnings and profits are distributed, they remain as such, available for future distribution. The term means "division or apportionment among several or many," and synonymous are: apportionment, allotment, dispensation, disposal, dispersion, classification, arrangement—Webster's New International Dictionary. To me the above does not permit us to consider a declaration of dividend, accompanied merely by bookkeeping entries reducing surplus, as a distribution of earnings and profits. In no real sense were they distributed. To so hold is to give more bookkeeping entries weight which is nowhere else accorded to them. Real facts, not bookkeeping

entries, control the determination of taxable income. *Doyle v. Mitchell Bros. Co.*, 247 U. S. 179; *B. F. Goodrich Co.*, 1 T.C. 1098. We held in *F. J. Young Corp.*, 35 B.T.A. 860; *affd.*, 103 Fed. (2d) 137 that book entries transferring surplus to a no-par stock account in order to increase the stated value did not diminish the corporate earnings or profits available for dividends, saying in part: "The book entries took nothing from the corporation and gave nothing to the stockholders." Surely the same is true here. In [44] *Inland Development Co. v. Commission*, 120 Fed. (2d) 986, the directors of a corporation resolved that a dividend be declared and an entry was made on the corporate books charging the earned surplus account with \$53,125 and crediting that amount to the account of the sole stockholder, which on its books credited dividends received. The court said, "The nomenclature of the Board of Directors did not determine the essence or nature of the action taken. Calling it a dividend did not make it so." It was held that the transaction was not a dividend, but a sale of oil. In *J. W. Thompson*, 10 B.T.A. 390, a charge was made to surplus to cover a purchase made by the sole stockholder of a corporation. It was held that despite such charge and the designation as dividend in the return, there was no dividend. In *Pullman, Inc.*, 8 T.C. 292, we said that the fact that a corporation treated a distribution as from capital, rather than from earnings and profits, as to which no change was shown, was not controlling on the question



as to whether there was the equivalent of a distribution of a taxable dividend.

That bookkeeping, and particularly entries as to surplus, etc., in connection with dividends and the present question, is not determinative, seems to me well and definitely settled in *Edwards v. Douglas*, 269 U. S. 204. Construing section 31(b), added by section 1211 of the Revenue Act of 1917, as to corporate distributions from undivided profits or surplus, the Court said:

Congress did not use the words "surplus account" or "undivided profits account." Its language is "undivided profits or surplus."

\* \* \*

Later, referring to Congress and its intent: [45]

\* \* \* Its general aim was clearly to make the dividends, in whatever year paid, bear the tax rate of the year in which the profits of which it was a distribution had been earned, and for this purpose to treat as a unit the profits of the whole tax year. In providing measures for the attainment of that aim, it could be of no practical significance whether, at the time of the payment of the dividend, these profits appeared in a surplus or undivided profits account (as the profits earned within part of a year would, where a corporation closed its books monthly, quarterly, or semi-annually) or whether they still rested as current earnings without formal determination or specific allocation.

I think, therefore, the debit to surplus on the corporate journal is greatly outweighed by the majority view.

That declaration of a dividend is not sufficient for purposes of dividends paid credit is not subject to question. There must be actual or constructive receipt by the stockholder. Why should the rule be different when the question is whether earnings and profits have been distributed? One section, 27, says the dividend must be "paid"; the other, 115(a), says there must be "distribution." A difference seems to be based, I think, not on fact or effect, but upon mere words. We have, moreover, not limited the requirement that there be more than declaration of dividend to "dividends paid credit" cases. In *Korfund Co., Inc.*, 1 T. C. 1180, the question was whether a stockholder was taxable in 1928, when it was resolved that the net surplus be distributed in proportion to stock (with an agreement among the stockholders that the surplus be not withdrawn for four years), or in 1938, when the money was received. We held that the income was taxable in 1938, that mere declaration of dividend does not give rise to taxable income, commenting, *inter alia*, that funds were not set aside, that (as here) surplus was not credited to the stockholders on their accounts, that the dividend was not subject to the unqualified demand of the stockholders, and [46] that the corporation exercised control over the funds. Here, it is clear, either that, as in the *Korfund* case, the stockholders vol-



untarily permitted the surplus to remain with the corporation, or that they could not do otherwise, having no control. In either case, under the Korfund case they would not be taxable until paid. Why adopt a different rule for purposes of saying that when the corporation distributed—to affect the taxability to the stockholder of distributed amounts? That, indeed, is the final question both here and in the Korfund case. Moreover, it is clear that here, as in the cited case, there was exercise of control by the corporation over the funds. Though on the journal there was debit to surplus, the corporation never went so far as to credit the amount to stockholders running drawing accounts, on which apparently there were constant entries, certainly debit and credit entries, and the amounts of stockholders' indebtedness to corporation "varied greatly from time to time." Thus, the corporation kept control as much as in Korfund. On the books for 1930 the amount was merely "payable," and on the income tax return for 1931 the amount was shown under "other liabilities" as "dividends payable." Such records effectually, in my view, nullify any possible effect from a debit to surplus, for they show that in fact there was no segregation of amounts of earnings involved, in the corporate fisc, let alone a "distribution \* \* \* out of" earnings and profits—as section 115(a) requires. That declaration of dividend effects a relation of debtor and creditor, between corporation and shareholder, can not meet the "distribution" and "out of" earn-

ings test. In *Hadley v. Commissioner*, 36 Fed. (2d) 543, we again note that mere declaration is not held sufficient—in a case not involving dividends paid [47] credit: for there it was held that within section 201(a) of the Revenue Act of 1918 [the precursor of, and in the same language, so far as here pertinent, as section 115(a)], a mere declaration of dividend, without setting aside funds for payment, can not constitute either dividend or distribution, and that, without a declaration, if corporate earnings are credited to the account and unqualified control of the stockholders, there was such distribution as caused taxation of the amounts as income. The case shows the over-importance which is ascribed to mere declaration or debit to surplus by the majority opinion here. The important element is distribution, and we see control by stockholder, through unqualified credit to his account, again recognized as the test of taxability. The same question is ours here; the test of taxability. The same question is ours here; the test should be the same.

In *Lawrence v. Commissioner*, 143 Fed. (2d) 456, the court applied the test of absolute right of withdrawal of funds, on the same question and situation here presented, i. e., as to effect of declared dividend on diminishing corporate earnings and profits. The direct question was whether income from a dividend paid in 1937 was taxable or nontaxable because from paid-in surplus. This depended upon whether the amounts had in 1913-

1917 been distributed as dividends and then paid back into paid-in surplus, or whether, instead, the funds had never left the corporation and were therefore paid from earned surplus, and therefore as dividends, in 1937. During these years, 1913-1917, the amount of the earnings was declared as dividend, but there was not actual payment. Though the amounts were placed to the credit of the various stockholders on the books of the corporation, from which withdrawals were made [48] [the stockholders here had no such credits, no such control], the court considered from the evidence that the declarations were not regarded as “terminating the corporation’s control over the money,” and that the so-called dividends “were not unqualifiedly made subject to the demand of the shareholders so as to be income to them when placed to their credit on the books”; therefore the Circuit Court affirmed the Tax Court in holding that there had been no distribution in 1913-1917, so that there was taxable distribution from earnings in 1937. The point is that the court made the test, not declaration of dividend, but termination of corporation control over the funds by unqualified subjection to stockholders’ demand, and not the test primarily adopted by the majority here—creation of relation of debtor and creditor by dividend declaration. There was such declaration and creation of creditor-debtor relation in the cited case. The conclusion there can not stand with the majority opinion here. Mark that the question, as here, was whether pre-



vious alleged distributions had sufficed to diminish earnings available for dividends. If the test of unqualified control by stockholder was there properly applied, we must see that here the stockholders with no credit to their drawing accounts, and, just as in the cited case, not receiving the money, are in a weaker position in contending that there was distribution.

I have not considered it necessary to reiterate what has been said in *Emily D. Proctor*, 11 B.T.A. 235; *Mason v. Routzahn*, 275 U. S. 175, and *United States v. Phillips*, 24 Fed. (2d) 195, on the subject, which I regard as decisive of this question contrary to the majority view, for the reason that they hold that date of payment, not declaration of dividend, determines [49] taxability, therefore, here our question is merely whether under the decided cases there was something amounting to payment. Under such cases there was not. I dissent.

Black, Harron, and Oppen, JJ., agree with this dissent. [50]

The Tax Court of the United States  
Washington

Docket No. 8770

SAMUEL GOLDWYN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### ORDER

For good cause shown of record, it is

Ordered that the last sentence in the first full paragraph on page 6 of the Opinion in the above-entitled proceeding, promulgated September 30, 1947, and reported in 9 T. C. . . . ., reading:

“In its consolidated return for 1933 Art Cinema Corporation, of which Feature Productions, Inc., was a subsidiary, reported receipt of the dividend of \$136,327.17.”

be deleted and that there be substituted in lieu thereof the following:

“In its consolidated return for 1931 Art Cinema Corporation, of which Feature Productions, Inc., was a subsidiary, reported receipt of the dividend of \$136,327.17.”

/s/ BOLON B. TURNER,  
Judge.

Dated October 24, 1947.

[51]

The Tax Court of the United States  
Washington

Docket No. 8770

SAMUEL GOLDWYN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the Court's Findings of Fact and Opinion, promulgated September 30, 1947, the parties herein having filed a computation of tax on October 31, 1947, it is

Ordered and Decided: That there is no deficiency in income and victory tax for the calendar year 1943.

Entered November 17, 1947.

[52]

(Seal)      /s/ LUTHER A. JOHNSON,  
Judge.



Tax Court of the United States

Docket No. 8770

SAMUEL GOLDWYN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Courtroom 5050, Grand Central Terminal Bldg.,  
70 East 45th Street, New York, N. Y.,

November 4, 1946, 2 p.m.

Met pursuant to notice.

Before: Luther A. Johnson, Judge.

Appearances: Ferdinand Tannenbaum, Esq., Z. N. Diamond, Esq., and George Lewis, Esq., 20 Exchange Place, New York City, N. Y., appearing for petitioner. William A. Schmitt, appearing for respondent. [55]

PROCEEDINGS

The Clerk: Docket No. 8770, Samuel Goldwyn.

The Court: State your appearances for the record.

Mr. Tannenbaum: Ferdinand Tannenbaum, Z. N. Diamond, George Lewis, appearing for petitioners.

Mr. Schmitt: William A. Schmitt, for respondent.

The Court: You may proceed.

Mr. Diamond: If your Honor please, this case involves a deficiency in income tax in the amount of \$117,688.18 for the taxable year ended December 31, 1943.

The tax liability arises from the Commissioner's treatment of a distribution made in the year 1942, in the sum of \$800,000.

The Commissioner's position and the taxpayer's position varies on one point, which is as to what portion of that distribution, admittedly made in 1942 in the amount of \$800,000, represents a distribution of earnings and profits and what portion of that distribution represents a return of capital.

We have stipulated for the Court what the alternative amounts would be, in the event the Court makes findings which I will go into in just a moment, so that there won't be any evidence required in order to compute earnings and profits as of any particular period. [56]

The question of how much of the distribution of \$800,000 represents a distribution of earnings and profits of the distributing corporation and how much represents in effect a return of capital to the respective distributees depends, in its turn, upon the effect on the earnings and profits of the distributing corporation, which is United Artists Studios Corporation, of a prior distribution made pursuant to a declaration of a dividend in September of 1930.

The position of the petitioner is that this declaration of a dividend, made in 1930, in September,

1930, made payable on December 15, 1930, in effect reduced in the year 1930 the amount of earnings and profits of the corporation at a point of time not later than the payable date.

In other words, petitioner's position is based upon what we conceive to be the classical effect on the earnings and the profits of the corporation, of the declaration of a dividend.

We say that when that dividend was declared in September, 1930, made payable to stockholders of record on September 10, 1930, the dividend declaration having been made on September 11, 1930, the dividend being made payable pursuant to the resolution of the corporation on December 15, 1930—we say that the effect of that [57] dividend was to segregate out of the earnings and profits of the corporation the amount of that dividend declaration, that at that time the corporation had in effect changed the relationship between itself and its stockholders in so far as that dividend was concerned, from that of a stockholder and a corporation to a creditor and a debtor, in the amount of the declaration; that if that corporation had tried to rescind that dividend declaration at some later date it could not have done so.

We say that as a result of that fact the dividend declaration of September 11, 1930, reduced available earnings and profits of the distributing corporation—that is, the declaring corporation—at a period of time not later than the 15th of December, 1930, when the dividend was, by its terms, made payable.



We say in addition to that, that if as a matter of law that position be not sustained, if it be held that the actual date of payment to the stockholder is the controlling date so far as the reduction of earnings and profits is concerned, then we say that the dividend was actually paid at a date not later than December 15, 1930, and we will introduce evidence to show that fact.

And that, in essence, your Honor, I think is the issue here. In other words, the taxability of the 1942 distribution depends on the effect on the earnings [58] and profits of the 1930 dividend.

The Court: Counsel for respondent?

Mr. Schmitt: This is not a very complicated case, your Honor, from a factual point of view, and counsel for petitioner has, in his statement of the position which petitioner will take, pretty well covered what the issue is.

Of course, the respondent takes the view that the amount of earnings and profits available for a dividend is determined as of the date of payment, rather than the date of declaration.

Factually, the situation is this, that on September 11 a declaration was made by this corporation—

The Court: You mean September 11, 1930?

Mr. Schmitt: 1930—payable to stockholders of record on September 10, 1930, payable on December 15, 1930.

As a matter of fact, we think the evidence will show that notwithstanding this declaration fixing

a specific time for payment, the dividend was not paid until 1933.

The Court: Will there be any evidence of any payment made on December 15, 1930, of dividends?

Mr. Schmitt: There will be no direct evidence that there was any payment made on December 15, 1930. [59]

I do not know what implications or what conclusions counsel may draw in that respect. We do not think that there was any payment, any receipt by the stockholders, either actual or constructive, in 1930. The only time that they received anything was in 1933.

The Court: 1933 or 1943?

Mr. Schmitt: 1933.

I might say that in 1942, if your Honor please, \$800,000 was distributed to the instant taxpayer, and it is to trace these accumulated earnings or profits back during these years, 1930 and 1933, that gives rise to the tax in question.

The tax in the deficiency, however, is 1943. But 1942, the income when adjusted, being greater than the income in 1943, it is really what happened in 1942 that counts in this controversy, although the deficiency will be 1943.

We have some of the facts stipulated, and others will be subject to proof and some documentary exhibits.

Mr. Diamond: If your Honor please, at this time I should like to offer on behalf of petitioner and respondent stipulation of facts.

The Court: It will be received and marked as an exhibit.

Mr. Diamond: If your Honor please, there is [60] one procedural matter that I would like to have disposed of before we start with our testimony.

We filed an amended petition—I believe it was on October 23—changing the original petition in one material respect.

That amended petition was sent to the Tax Court with a motion asking leave to file.

I understand that motion has not yet been disposed of.

The Court: Is there any objection to the motion being granted?

Mr. Schmitt: I would like to see the motion.

If your Honor please, I understand that it came into the office this morning, in my absence, and I have not seen it. I would like to see it just to refresh myself at this juncture. I was anticipating receiving it before this.

(The Clerk hands document to Mr. Schmitt.)

Mr. Schmitt: I am sorry to delay the Court on this.

The Court: That is all right.

Mr. Schmitt: Counsel, what was that change? Could you point it out for me?

(Mr. Diamond complies with Mr. Schmitt's request.) [61]

Mr. Schmitt: That is the only change?



Mr. Diamond: That is the only change.

Mr. Schmitt: If your Honor please, the other day counsel at a conference we had in his office showed me the proposed amendment that he was going to make, and I saw it at that time. But I did not have a chance to study it thoroughly and I did not do more than casually read it.

I notice now, as I glance over it, and in view of the opening statement by counsel for petitioner, a new light has come into the picture, a new aspect, a new angle, and I do not want to agree to this amendment.

The original petition, if your Honor please, on page 3, paragraph 5, subparagraph B reads as follows:

“On September 11, 1930, the board of directors of Samuel Goldwyn Studios declared a cash dividend of \$203,091 at the rate of \$21 a share to stockholders of record as of September 10, 1930, payable December 15, 1930. Such dividend was paid as follows:

“\$185,327.17 on May 27, 1933.

“\$17,763.83 on June 29, 1933.”

The proposed amendment, paragraph 5-B, the first sentence thereof, is the same.

The second one makes this substitution: [62]

“Such dividend was distributed to the stockholders on September 17, 1930.”

The first one, as your Honor will note, said that the dividend was paid on those respective dates. Now this one comes along and purports to make

a change and use the word "distributed" on that latter date, 1933.

There may be some legal effects and conclusions to be drawn from the difference in wording there, the word "paid" on the one hand, and the other word "distributed" on the other.

For that reason, especially at this stage of the proceeding, I do not know just what proof counsel will attempt to present.

For instance, the stipulation as we have filed it has a gap in there inasmuch as no reference is made in the stipulation, it being a partial stipulation, to the mechanics of what was done with this \$203,000 odd. That was to be supplied by proof, and if the admissions of the pleadings, the petition and the answer are stricken out, which said they were paid, it might be, depending upon the proof or lack of proof or failure to prove on the part of the petitioner—the burden might be passed to the respondent to fill in that gap.

The Court: I do not think the pleadings should be amended so as to shift the burden. I do not see any [63] special reason for it.

Yet, at the same time, I think petitioner ought to have the right to see that no injustice is done to it.

Mr. Schmitt: We have, if your Honor please, only filed a partial stipulation here.

The Court: I think if the motion should be granted to amend the pleadings—would it eliminate the suggestion you made with reference to

prejudice to the respondent if he should be permitted to amend his answers to conform to the amended pleadings of the petitioner? Could your interests be taken care of in that way?

Mr. Schmitt: I think that would take care of it, if your Honor please; if I enter a general denial.

The Court: In other words, I think respondent should have the right to see that the answers be amended to meet the amended pleadings of the petitioner.

Mr. Schmitt: I do not know, if your Honor please, what my particular rights are in the premises.

Here we have an allegation in the petition and an admission in the answer. Whether that has crystallized that particular issue or not, or whether they can unscramble the eggs—

The Court: I think the change in the pleadings would eliminate any crystallization. [64] I think if they do amend, your rights should be protected, too.

Mr. Diamond: If your Honor please, I think I might clear it up by saying this, that the only change made in the amended petition is to change the recited date of payment, of distribution of this dividend, from 1933 to 1930.

We discovered, in the course of negotiations, in stipulations and in the course of developing evidence to fit in, to see whether we could prove certain allegations that we wanted to that actual payment was made, according to our interpretation of the facts, in 1930.



I looked at the petition and saw that we had pleaded there that payment had been made in 1933, although I think counsel is in error in stating that it was admitted.

I do not believe it was. I think it was denied.

Mr. Schmitt: I have the answer here.

Mr. Diamond: I do not think it makes any difference, your Honor.

The Court: What about the question that counsel for respondent raised, that instead of "paid" you used the word "distributed"? Did you attach any significance to that?

Mr. Diamond: I did not at the time, your [65] Honor. I merely felt that the word "distributed" was more correct technically, because the Internal Revenue Code uses the word "distributed."

The Court: You mean you thought it would be more accurate?

Mr. Diamond: That is correct. So I thought the only thing for me to do was to amend the petition to make it conform to the pleadings.

Mr. Schmitt: There is more than that. The amendment says, "Such dividend was distributed," and so forth; and the petition, "Such dividend was paid in 1933."

That is quite a material difference. It is a difference not only of three years, but of meaning.

Mr. Diamond: I do not predicate any distinction on the use of the word "distributed," your Honor, and as far as Mr. Schmitt is concerned I am perfectly content to use either term.

The Court: And you do not undertake to shift the burden?

Mr. Diamond: No, sir; merely that we have to prove that the distribution was made in 1930.

The Court: I think the pleadings should not be changed, except by consent of counsel.

Mr. Schmitt: My denial of the new allegation [66] of 1930 would not change the situation in respect of 1933. I still would have to go forward with proving that 1933 distribution or payment. That is the difference there, if your Honor please. Denial will not solve that situation.

The Court: I am not entirely familiar with the rules in reference to making pleadings, but would amendment of the pleadings leave you in the same situation, so that your rights would be the same?

Mr. Schmitt: No, sir. If I had denied the original and no attempt was made to change it, they would have to go forward and prove the 1933 payment or distribution.

The Court: Is there any way, through agreement of counsel, by which that can be done under the rules?

Mr. Diamond: If your Honor please, I am not quite clear on what Mr. Schmitt is basing his objection on.

We determined, in the course of preparing for trial, that our 1933 allegation of payment was incorrect. We determined, under our interpretation of facts, that 1930 was the date of payment.

I would think that I would have the right to

make that amendment at any time prior to the trial without in any way affecting the Government's rights. In other words, if I think I have incorrectly pleaded the facts, I [67] think almost as a matter of course this Court has traditionally permitted counsel to make the change.

The Court: Rule 17 provides that:

“The petitioner may, as of course, amend his petition at any time before answer is filed. After answer is filed a petition may be amended only by consent of the Commissioner or on leave of the Court.”

What the Court is trying to find out is whether or not, in exercise of its discretion in permitting filing of the amendment, it can be done in such a way as not to prejudice the rights of respondent or whether respondent by agreement or consent of petitioner's counsel could restore the original—

Mr. Diamond: Does your Honor mean by that that I have to bear the burden of proving what I think is wrong?

Mr. Schmitt: No, but I think that you should bring in the factual data, the documentary proof; the journals, letters, ledgers or whatever they are, which we both know exist and which neither one of us denies, and that would make your case.

You could put any interpretation on those documents, ledgers, minutes and so forth, as you wish. But I do not want to have it come in and bring it in myself, [68] because that is not my original burden.



Mr. Diamond: We have it here, your Honor. All the evidence as to which Mr. Schmitt would be interested is here in court today.

The only thing I am trying to get clear is whether Mr. Schmitt wants me to bear the burden of proving a fact which I think is incorrect and as to which I have asked that my pleadings be amended.

The Court: You think there was an error on your pleadings originally?

Mr. Diamond: Yes, sir. That is correct.

Mr. Schmitt: I do not want to refer to the evidence in advance, but there are certain incidents in the regular course of business, in the journal and ledger, which would show the mechanics which were done in 1933, and counsel has furnished me with photostats after showing me the originals of said documents.

The conclusion to be drawn from those entries on the books, which may or may not show that it was 1930 that was intended rather than 1933—or they ipso facto might show that.

But I still want those entries, and I think the Court is entitled to the whole picture.

The Court: As I understand it, they will all be offered by the— [69]

Mr. Schmitt: By the petitioner.

Mr. Diamond: No, sir. That is one of the things I wanted to get clear.

So far as we are concerned, the evidence is pretty much the same as it has been up to now. The facts

that are contained in the stipulation of facts are basically what we rely on, with additional oral testimony which we are going to adduce this afternoon.

Looking at those facts, however, as they appear in the stipulation, we have determined that as a matter of evidence the evidence shows that the correct date of payment is not 1933 but 1930.

In that posture of the case I thought that I had a right to conform my pleadings to the proof. After all, the pleadings are not evidence. The proof is the thing that counts with the Court, and I did not want to go to this Court with an allegation of payment in 1933 and then tender to this court evidence of payment in 1930.

If that is correct, if I was wrong in my original allegation as to payment in 1933 I would think that I would have the right to conform my pleadings to the proof that I am about to make.

If that is true I do not think Mr. Schmitt has the right to say to me that I have entered into a contract [70] with the Government to keep that original allegation in my pleadings, and that if I take it out I have to support with evidence what I think is the right allegation.

The Court: If your pleadings would show 1933 and your proof 1930, there would be a variance.

Mr. Diamond: Yes, sir.

The Court: So it is necessary for you to conform the pleadings to the proof. But it was your oversight and neglect to that originally.

Now, if you did it as of this date, why couldn't it be considered as of this date as if you had done it right originally?

Mr. Diamond: If your Honor please, we have all the evidence that Mr. Schmitt would need to prove the 1933 date if he thinks that date is material. I do not think it is.

Mr. Schmitt: If your Honor please, this issue cannot be tried before this Court without all of these book entries coming into the record. I do not care whether it is petitioner's side or respondent's side. It would not be fair to this Court for the journal and ledger entries in 1933 to be withheld from the Court.

The question is who is going to present those. It is the integral part of the same transaction, regardless of what interpretation is put on it. [71]

Who is going to present that?

In the original petition and answer that burden was on the petitioner. He alleged, and respondent admitted.

Now he wants to switch that around at the eleventh hour and offer these things to the respondent to make it the respondent's burden.

I will make this suggestion, because I do know that it is absolutely necessary for your Honor to have this evidence. You could not render a decision without having this factual data.

We might agree to put it in as a joint exhibit.

The Court: Could that be done?

Mr. Diamond: I do not agree with counsel, in saying you have got to have that to make a decision.

We say the payment was made in 1930. If that is true then the deficiency has to be expunged to give effect to that.



If we had originally in our petition pleaded 1930 that would have been our original pleading. I take it counsel could not have made me prove, by my evidence and witnesses a different day.

And today he is trying to put me in that position.

The Court: I do not see that there is so much [72] importance in the question of who offers the testimony. It strikes me that that is a matter the Court will have to control.

Mr. Schmitt: I was just going to say that your Honor might reserve the ruling of the Court on this and we will go ahead on it, and then you can make that ruling.

The Court: Yes, we will go ahead.

Mr. Schmitt: The issue now is on the motion to amend.

The Court: Yes.

Mr. Schmitt: To which the respondent objects.

Mr. Diamond: Let me see if I can do this, your Honor.

I think that basically we get down to certain entries made in 1933. We have those entries here in court. We could not agree on a stipulation in respect to the conclusions to be drawn from those entries.

I think it would be perfectly all right if Mr. Schmitt's concept of that issue is pretty much the same as mine, to offer those entries into evidence as a joint exhibit.

The Court: All right, that will be offered by both parties without prejudice.

Mr. Schmitt: And I would like for my objection to this to be ruled on.

(Documents referred to were marked Joint Exhibits 1-A to 3-A and received in evidence.)

[Joint Exhibits 1-A to 3-A are set out in full at page 145 of this printed record.]

The Court: With the understanding that that exhibit will be offered as a joint exhibit I will grant the motion to amend.

Mr. Schmitt: And I wish also to record then a general denial by the respondent, if your Honor please.

The Court: Counsel for respondent will be granted the Court's permission to amend his answer to conform with the amended pleadings.

Mr. Diamond: May I call my first witness, your Honor?

The Court: Yes.

Mr. Diamond: Mr. Ezzell.

MARVIN A. EZZELL,

called as a witness in behalf of the petitioner, having been first duly sworn, testified as follows:

Direct Examination

The Clerk: State your name for the record, please.

The Witness: Marvin A. Ezzell, E-z-z-e-l-l.

By Mr. Diamond:

Q. Mr. Ezzell, what is your present occupation?

My present occupation is that of vice president of Samuel Goldwyn Productions, Inc., and general manager of Samuel Goldwyn Studios, formerly known as United [74] Artists Studio Corporation, Ltd.

(Testimony of Marvin A. Ezzell.)

Q. Will you state what your occupation was prior to your present capacities?

A. Commencing with January, 1932, I was auditor for United Artists Studio Corporation, Ltd., and thereafter and successively I was business manager, executive manager and general manager of that concern.

Prior to 1932 I was auditor for Feature Productions, Inc., Ltd., and prior to being auditor of that company I was assistant auditor.

I became auditor of that company in September, 1929.

Q. Is it correct to say that from at least 1929 to the present time you have been considerably active in the motion picture industry?

A. Yes.

Q. Are you familiar with the production end of that industry?      A. Completely, I think.

Q. You referred to United Artists Studio Corporation—

Mr. Diamond: I think I might point out to your Honor at this time that that is the name of the declaring corporation; that is, the corporation that declared the dividend upon which we are here at issue. [75]

By Mr. Diamond:

Q. Has that corporation—

The Court: Was that the predecessor corporation of the petitioner corporation?

Mr. Diamond: Yes. It was then known as United Artists Studio Corporation.



(Testimony of Marvin A. Ezzell.)

The Court: When was the name changed; in 1932?

By Mr. Diamond:

Q. When was the name changed from United Artists Studio Corporation to Samuel Goldwyn Corporation, Mr. Ezzell?

A. To the best of my recollection in 1939.

The Court: And the present corporation did not come into being until 1939?

The Witness: At the present time the business of that corporation is not operated as a corporation.

The Court: The name is that of an individual, isn't it?

Mr. Diamond: I believe that is being operated by Mr. Goldwyn as an individual, your Honor.

The Court: He is the petitioner in the case as an individual?

Mr. Diamond: Yes, he is.

The Court: Is he the sole shareholder? [76]

Mr. Diamond: I do not know.

By Mr. Diamond:

Q. Could you answer that, Mr. Ezzell?

A. Is he the sole shareholder of what?

Q. Of Samuel Goldwyn Studios.

A. It is not a corporation. It is a firm name, doing business under the style and firm name of Samuel Goldwyn.

The Court: Is the other firm you mentioned; is that a corporation?

The Witness: Samuel Goldwyn Studios, the California corporation, was dissolved.

(Testimony of Marvin A. Ezzell.)

The Court: When was it dissolved?

The Witness: In 1944.

Mr. Diamond: We stipulated, your Honor, that December 14, 1942, petitioner became the owner of all the outstanding capital stock of Samuel Goldwyn Studios, which is the same as the United Artists.

The Court: One is the successor of the other?

Mr. Diamond: That is right; successor in name.

By Mr. Diamond:

Q. Mr. Ezzell, when we talk about "Studios," Samuel Goldwyn Studios and studios of United Artists Corporation, what do we mean? Could you tell us what the [77] physical layout of this corporation has been from 1930 to this time?

A. Physically it consists of approximately an area of 18 acres, and on the land there existed, in 1930—

Mr. Schmitt: May I interrupt you, please?

If your Honor please, I object to this line of testimony. I do not think it is material to the issue.

I do not wish to interrupt continuously—

The Court: I think the Court wants to get the entire picture of this situation. This is, as I understand, just introductory in the issue involved.

Objection overruled.

A. (Continuing): In 1930, on the particular land in question, there existed seven—

The Court: Where is this land located?

The Witness: This land is located in Hollywood, California.

(Testimony of Marvin A. Ezzell.)

A. (Continuing): —there existed seven so-called stages, having an aggregate square footage of approximately 100,000 square feet, along which motion pictures are photographed. These are soundproofed stages.

There also existed several office buildings, cutting rooms for cutting film, projection rooms for viewing film, a still department for developing still photographs, a sound recording building, a plaster shop, [78] blacksmith shop, electrical shop, paint shop, carpenter shop or mill, property shop for the manufacture of various properties, makeup, hairdressing departments and facilities for manufacturing wardrobe, storing and issuing wardrobe, garages and practically everything incidental to a small manufacturing enterprise manufacturing sets and equipment of all kinds necessary in the production of motion pictures, together with vaults for storage of film and cameras and other equipment.

There were also, I believe I mentioned, several office buildings housing the personnel of the studio company and housing the personnel of the customers of the studio company who produce pictures on its premises.

Subsequent to 1930 there was erected an additional stage, having an area of about 28,000 square feet, and also an additional office and dressing room structure, together with numerous smaller structures, all of which exist today.

By Mr. Diamond:

Q. Mr. Ezzell, I think you stated that you be-



(Testimony of Marvin A. Ezzell.)

came auditor for Feature Products. Did you state the date on which you became auditor for Feature Productions?

A. I think in September, 1929.

Q. And what was the relationship between Feature Productions and United Artists Studio? [79]

A. It was a dual relationship. Feature Productions was a controlling stockholder of United Artists Studio Corporation, Ltd., and was also a tenant of United Artists Studio Corporation, Ltd., leasing space and facilities and equipment from United Artists Studio Corporation, Ltd., for use by itself in the production of motion pictures which it produced.

Q. Was your answer given with respect to the year 1930? A. Yes.

Q. Where were their offices located?

A. The offices of Feature Productions, Inc., Ltd., were located in an office building on the premises of United Artists Studio Corporation, Ltd.

Q. Was that on the premises of the studio that you just described? A. Yes.

Q. Where did you perform your duties in 1930?

A. I performed my duties in an office in the building occupied by Feature Productions, Inc.

Q. Could you tell us how much stock Feature Productions owned in United Artists Studio Corporation, Ltd., in 1930?

A. In 1930 Feature Productions owned 6491.77 shares and an agreement to purchase an additional 2179.23 [80] shares, owning, itself, outright about 66 per cent of the outstanding common capital stock, and having under agreement to purchase ap-

(Testimony of Marvin A. Ezzell.)

proximately 23 per cent of the outstanding stock, an aggregate of about 90 per cent.

Q. Who were the stockholders of Feature Productions?      A. Art Cinema Corporation.

Q. Could you tell us what the activities of Feature Productions were in 1930?

A. In 1930 Feature Products was engaged solely in the business of producing motion pictures.

Mr. Schmitt: If your Honor please, I again wish to object.

The Court: I think we had better get all the data, though I think we are going too much into detail.

Mr. Diamond: If your Honor please, if you will, I would like you to bear in mind the fact that on September 17, 1930, we say that what was done by United Artists Studio Corporation, Ltd., constituted payment or the distribution of the dividends to the stockholders.

The Court: All right, go ahead.

By Mr. Diamond:

Q. In what business was United Artists Studio Corporation, Ltd., engaged in 1930?

A. In the business of owning and maintaining and [81] operating a so-called rental or service studio, supplying space, equipment, facilities, labor and personnel to producers of motion pictures, primarily to its stockholder-producers.

Q. You say that it rented its studio facilities to its stockholder-producers?      A. That is right.

Q. Could you tell us on what basis the rentals were fixed?

A. At the beginning of each fiscal year of the

(Testimony of Marvin A. Ezzell.)

studio corporation a forecast was made of the probable amount and number of pictures, measured in terms of photographing days and physical requirements of the pictures and a statement was made of the probable income to be expected from that volume of production.

Mr. Schmitt: Your Honor, I do not want to appear captious, but the basis for the rental between these various tenants, I think, is going too far afield for the lawsuit involved.

The Court: What is the relevancy of the question just asked?

Mr. Diamond: I want to show the nature of the distributing corporation, your Honor, in 1930, the relationship between the corporation and its stockholders at that time, the sources of its income, its activities and [82] vis-a-vis of those of its stockholders.

In other words, I want to show your Honor that as a matter of fact this was a co-operative enterprise run by the stockholders in effect, so that the stockholders produced motion pictures, and they used the facilities of United Artists Corporation.

I think that fact is highly important in my development of the case, that in the circumstances of what happened on September 17, 1930, there was in effect a payment of that dividend to the stockholders.

I think that becomes highly important in any case.

The Court: Go ahead. The Court overrules the objection.

Mr. Schmitt: Your Honor, do you wish me to



(Testimony of Marvin A. Ezzell.)

object further, or will you consider that I have made these objections?

The Court: Yes.

A. Stated briefly, the rates were set in such fashion as to take care of the overhead and expense of the corporation, allow a reasonable return of approximately 7 per cent on the invested capital, provide for amortization and depreciation and build up some surplus.

By Mr. Diamond:

Q. Did the stockholders of United Artists Studio [83] Corporation, Ltd., have first call on its facilities? A. They did.

Q. In 1930 who would you say were the main lessees?

A. Feature Productions, Inc., Ltd., and Samuel Goldwyn, Inc., Ltd.

Mr. Schmitt: Would you mind repeating that question?

Mr. Diamond: In 1930 who would you say were the main lessees of United Artists Studio Corporation, Ltd.

The answer was, Samuel Goldwyn, Inc., Ltd., and Feature Productions, Inc., Ltd.

Mr. Schmitt: If your Honor please, I object to that.

Q. This witness has not shown that he had any official capacity with United Artists Studios until 1932, and he is attempting here to testify about the internal business affairs of this corporation in 1930.

The Court: The witness was connected with one of these concerns in 1929?

(Testimony of Marvin A. Ezzell.)

Mr. Diamond: Yes.

Mr. Schmitt: That is the Feature Productions.

Mr. Diamond: The witness testified, I think, your Honor, that he was auditor for the controlling stockholder of the distributing corporation in 1930, that he performed his functions on the studio lot.

The Court: If he knows, he can testify. Cross examination can develop it further.

If you do know, say so.

By Mr. Diamond:

Q. Mr. Ezzell, in the answers you have given me so far, have they been based upon your own knowledge? A. Yes.

Q. In your own knowledge which of the two corporations that you mentioned used the facilities of the studios more in 1930?

A. Feature Productions, Inc., Ltd.

Q. Could you tell us if you know how United Artists Studio Corporation, Ltd., acquired the facilities that it rented to its stockholders? In other words, how did it acquire the studio?

A. United Artists Studio Corporation, Ltd., acquired in 1926, the year of its incorporation, the facilities—the premises and facilities which previously had been owned and operated as Pickford-Fairbanks Studios Company. They acquired the land under a leasehold arrangement and acquired the existing buildings, other structures and equipment under purchase agreement for which payment was made by stock of the United Artists Studio Corporation, Ltd.

(Testimony of Marvin A. Ezzell.)

It was formed by Joseph M. Schenck, Mary [85] Pickford and Douglas Fairbanks, who were then distributing their pictures through United Artists Studio Corporation, Ltd., primarily as a place for the production of their pictures.

Q. Mr. Ezzell, I show you joint Exhibit 2-B—  
Mr. Diamond: This is attached to the stipulation, your Honor.

By Mr. Diamond:

Q. (Continuing): —of the stipulation filed by the parties, and ask you who A. M. Brentinger was.

A. A. M. Brentinger was vice-president and general manager of United Artists Studio Corporation, Ltd., and general manager of Feature Productions, Inc., Ltd.

Q. Will you also identify Abraham Lehr?

A. Abraham Lehr was—A. M. Brentinger was also a director of United Artists Studio Corporation, Ltd. Abraham Lehr was a director of United Artists Studio Corporation, Ltd. He was also vice-president, a director and acting general manager of Samuel Goldwyn, Inc., Ltd.

Q. Who was Mark Feiler?

A. Mark Feiler was a director of United Artists Studio Corporation, Ltd. and was related to Joseph M. Schenk.

Q. I think you testified that Schenk was a director of—you have not testified as to Mr. Schenk. Suppose [86] you tell us who Mr. Schenk was?

A. Mr. Schenk was president of Art Cinema Corporation, the parent company of Feature Productions, Inc.



(Testimony of Marvin A. Ezzell.)

The Court: These names appear in the documents here?

Mr. Diamond: They appear in the minutes of the United Artists.

By Mr. Diamond:

Q. Is that Joseph M. Schenk, about whom you testified?

A. Joseph M. Schenk was also a director of United Artists Studio Corporation, Ltd.

Q. Who was N. A. McKay?

A. N. A. McKay was a director of United Artists Studio Corporation, Ltd., and business manager for Mary Pickford Fairbanks.

Q. Who was Robert P. Fairbanks?

A. Robert P. Fairbanks was president and a director of United Artists Studio Corporation, Ltd., and a brother of Douglas Fairbanks.

Q. Are all your answers true as to the year 1930? A. Yes.

Q. Can you tell us who was assistant secretary and counsel for United Artists Studio Corporation, Ltd.? A. George W. Cohen. [87]

Q. Was he counsel for any of the other stockholders of United Artists Studio Corporation, Ltd.?

A. He was also counsel for Samuel Goldwyn, Inc., Ltd., and Feature Productions, Inc., Ltd.

Q. Mr. Ezzell, is it correct to say that in the activities in which United Artists Studio Corporation, Ltd., was engaged all the stockholders of United Artists and United Artists Studio Corporation, itself, act as an integrated enterprise?

(Testimony of Marvin A. Ezzell.)

Mr. Schmitt: If your Honor please, I object to that. That is a conclusion.

He can testify as to what positions they hold, but to say that they form just a general community and an integrated legal setup, I think is calling for a legal conclusion.

Mr. Diamond: I think that is a statement of fact, if your Honor please. If they act in a certain way, I think is a statement of fact on the part of the witness. There is no conclusion there.

Mr. Schmitt: At most it is an opinion, without any previous foundation.

The Court: I think probably it might be better for the witness to describe, if he can, the method in which they operated, and let the conclusion be drawn as to integration. [88]

By Mr. Diamond:

Q. Will you do that, Mr. Ezzell, please?

A. All of the stockholders of United Artists Studio Corporation, Ltd., were represented on the board of directors of United Artists Studio Corporation, Ltd., and took an active part in matters of the corporation, in which they were all vitally interested.

The Court: Are the stockholders the same in both—

The Witness: Well, the stockholders of United Artists Studio Corporation were represented by directors who were officers or employees of the stockholder corporations.

Due to the nature of the operation of the studio

(Testimony of Marvin A. Ezzell.)

it was essential that they have a close working knowledge of the operations of the studio so that they could dovetail their own production and fit it into the studio's schedule of operations. So they were well informed at all times of the operations and the financial condition of the studio corporation.

By Mr. Diamond:

Q. Bearing that out a bit further, Mr. Ezzell, what precisely did the stockholder-producers of United Artists Studio Corporation, Ltd., lease from the studio?

A. The stockholders leased office space, and when [89] engaged in the making of a picture leased from the studio stage space for the erection and photographing of sets, exterior lot space for the erection of and photographing of exterior sets, space for make-up, hairdressing, wardrobe, draperies, cutting rooms, dressing rooms and equipment of all kinds used in the making of motion pictures, and obtained from United Artists Studio Corporation, Ltd. so-called craft labor, meaning mechanical labor of all kinds, and materials used in the erection of sets and in the making of pictures. They obtained also from the studio the necessary services and facilities for recording sound.

Q. Were the stockholder-producers of United Artists Studio Corporation, Ltd., required to use the studio and personnel?           A. Yes.

Q. How did the corporation bill its stockholders for the use of facilities?

A. The studio billed stockholders for the use



(Testimony of Marvin A. Ezzell.)

of labor and material on a daily basis. I should say they billed on a daily basis for the labor that was paid by the studio on a daily or hourly basis. They were billed daily for any equipment which customarily was rented on a daily basis. They were billed daily for the so-called production day charge, which was an over-all charge for [90] the right and privilege of photographing on the studio premises.

The Studio Corporation billed its stockholder-producers weekly and were paid weekly for office space and certain other items which were rented on a weekly basis.

Q. Mr. Ezzell, are all the answers you are giving as to the arrangements and relationships between United Artists Studio Corporation, Ltd., and its stockholders true as to the year, 1930?

A. Yes.

Q. Will you tell what arrangements were made for the payment of the amounts due from the stockholders to the corporation?

A. The stockholders paid their accounts weekly if the requirements of the studio were such as to necessitate the payment of funds.

If the studio did not need the funds for current operations, payments were not made as a rule weekly, but were paid more or less when the studio needed funds.

Mr. Schmitt: If your Honor please, I object to that question. This witness is attempting, without having laid any foundation, to say just how pay-

(Testimony of Marvin A. Ezzell.)

ments are required from people who owe money to this corporation. [91]

I think it is obvious that no one can tell just when they can meet an obligation. Yet this witness is telling that they pay when they get ready or when the studio wants the money.

The Court: Cross examination will probably develop that more fully. If he knows what is done between these interested parties it might shed some light.

Mr. Schmitt: I wish to register this objection at this time, if your Honor please, to his line of testimony.

The Court: All right.

By Mr. Diamond:

Q. Mr. Ezzell, are the answers that you have given true and correct of your own knowledge?

A. Yes, sir.

Q. Did the stockholder-producers of United Artists Studio Corporation, Ltd., have running accounts with the corporation? A. Yes, sir.

Q. Is that true for the year 1930?

A. Yes, sir.

Q. And did these running accounts reflect debit balances owing from the stockholders to the corporation?

A. They did, except that on occasions they may [92] have reflected credit balances.

Q. Could you tell us how these accounts were set up in 1930? Were they set up as a general, over-all indebtedness or were they set up picture by picture, or how?

(Testimony of Marvin A. Ezzell.)

Mr. Schmitt: If your Honor please, I think the accounts would be the best evidence, themselves, and not what this witness would testify in this regard.

The Court: What is the materiality of that?

Mr. Diamond: If your Honor please, I think that all of these questions go to the basic question that we have evolved as to the September 17, 1930, date.

Our position is that in the circumstances that existed in that year, in view of the relationship between the stockholders and the corporation, the fact that this was a closely held, integrated, well-knit corporation—when the corporation on September 17, charges its surplus with the amount of the dividend and credits the accounts of stockholders with their pro rata shares—that that, under the law in the decided cases, constitutes payment of that dividend.

From that standpoint, if your Honor please, it is highly essential for me to develop all the essential facts which bear on the relationship between the stockholders and the distributing corporation and which show the arrangements between the two.

The Court: I suppose, with reference to the manner of doing business between them, it might be permissible.

Mr. Diamond: Yes, sir.

The Court: I will overrule the objection.

Mr. Schmitt: Exception, please.

The Court: Note an exception.



(Testimony of Marvin A. Ezzell.)

By Mr. Diamond:

Q. Mr. Ezzell, in your capacity as manager of Samuel Goldwyn Studios do you have possession of and control over the books and records of United Artists Studio Corporation, Ltd.? A. Yes.

Q. Have you now in your possession the original records of United Artists Studio Corporation, Ltd., which reflect the running accounts for the year 1930, which you have just described?

A. I believe they are here in court.

Q. Did you furnish those records to us at our request? A. Yes.

Q. Did you, at our request, make a summary from the original records of United Artists Studio Corporation, Ltd., of these running accounts?

A. Yes. [94]

Q. Can you tell us whether they were set up picture by picture?

A. They were set up picture by picture in 1930.

Q. In 1930? A. Yes.

Q. Were they set up picture by picture in the year 1933? A. No.

Q. Will you look at that summary that you have drawn at our request and advise us as to what the total indebtedness of the stockholders to the United Artists Studio Corporation, Ltd., was on September 17, 1930?

A. The aggregate amount?

Q. Yes, sir.

A. \$85,865.06 (referring to document).

Mr. Schmitt: What is the witness testifying from there?

(Testimony of Marvin A. Ezzell.)

Mr. Diamond: The witness is testifying from a summary which he made from the original books and records of United Artists Studio Corporation, Ltd., which are here in court at this time.

Mr. Schmitt: For what period?

Mr. Diamond: For the year 1930.

Mr. Schmitt: Has he made any summary of any other periods? [95]

Mr. Diamond: I am not so sure I ought to be called on to answer that question, Mr. Schmitt. I think you might address that to the witness.

Mr. Schmitt: I just wanted to know if he is reading from a compilation of just part of the years involved.

Mr. Diamond: There are only two dates about which I am asking the witness, Mr. Schmitt, one is September 17, 1930, on which the witness has just testified, and the other is December 15, 1930.

By Mr. Diamond:

Q. Will you tell us what the total indebtedness from the stockholders to the corporation was on December 15, 1930? A. \$90,818.87.

Mr. Diamond: Will you read back what the witness answered for the balance—

By Mr. Diamond:

Q. Mr. Ezzell, have you made a breakdown of those balances for each stockholder?

A. Yes.

Q. Will you look at the accounts on September 17, 1930, and tell us what the individual balances were in the individual accounts?

(Testimony of Marvin A. Ezzell.)

A. On September 17, 1930, the balance for Feature Productions was \$4133.41;

For the Douglas Fairbanks Company— [96]

Q. Before you go into that, Mr. Ezzell, on that individual account that you have just read, do you have a further breakdown of that, picture by picture? A. I do.

Q. Would you read that to us?

A. Yes. Balance on September 17, 1930, for Feature Productions, not involving any particular picture, was \$2,552.23; for the picture known as Abraham Lincoln, \$462.99.

Mr. Schmitt: If your Honor please, I believe this is encumbering the record unnecessarily.

The Court: What is the reason for breaking down these pictures?

Mr. Diamond: I wanted to show that the indebtedness was broken down into individual accounts.

The Court: I do not think it is material here.

Mr. Diamond: All right, I won't ask any further questions along that line.

By Mr. Diamond:

Q. Would you just read us there, Mr. Ezzell, what the debit balances per individual accounts were on September 17, 1930?

A. Feature Productions, \$4133.41;

Douglas Fairbanks, a credit balance of \$5143.19;

Mary Pickford, \$21,913.27. [97]

Mr. Tannenbaum: Credit or debit?

The Witness: Debit.



(Testimony of Marvin A. Ezzell.)

A. (Continuing): Samuel Goldwyn, Inc., Ltd., debit balance of \$64,961.57.

As of December 15, 1930:

Feature Products, a debit balance of \$83,086.05;

Douglas Fairbanks Co., a debit balance of \$2,459.27;

Mary Pickford Co., \$1,324.69.

By Mr. Diamond:

Q. Is that a debit balance?

A. Debit balance. Samuel Goldwyn, Inc., Ltd., a debit balance of \$3,948.86.

Q. Mr. Ezzell, these totals that you have read us represent aggregates of breakdowns by individual pictures, is that correct?

A. Individual pictures or miscellaneous charges where individual pictures were not involved.

Q. Mr. Ezzell, I think you testified that the stockholders were familiar with the day-to-day operations of United Artists Studio Corporation.

Could you tell us whether they got financial reports on the operations of that corporation?

A. Mr. Diamond, periodic financial reports were supplied to the stockholders. [98]

Q. How frequently were those reports supplied?

A. Usually monthly; sometimes more frequently, particularly if requested by a stockholder.

Q. Did the stockholders on September 11, 1930, know that a resolution was passed by the board of directors declaring a dividend?

Mr. Schmitt: I object, if your Honor please.

The Court: I do not know whether he knows whether or not information was furnished.

(Testimony of Marvin A. Ezzell.)

By Mr. Diamond:

Q. Mr. Ezzell, on September 17, 1930, was Feature Productions advised that it had been credited on the books of United Artists with its proportionate share of the dividend declared on September 11, 1930?

A. They had full knowledge of that due to the fact that A. M. Brentinger who was general manager of Feature Productions, was also general manager of United Artists Studio Corporation, a member of the board of directors of United Artists Studio Corporation, Ltd., had direct control over the accounting activities of the Studio Corporation, and being a member of it, he participated in the declaration of the dividend.

Mr. Schmitt: If your Honor please, I ask that his answer be stricken there. He is testifying for this Mr. Brentinger, and he has shown no qualifications to know [99] just what Mr. Brentinger would do.

The Court: I think Mr. Brentinger would be better qualified to answer.

Mr. Diamond: I agree with your Honor, but Mr. Brentinger, I think has been dead for a number of years.

The Court: I think the witness is assuming too much prerogative to speak for the knowledge of Mr. Brentinger.

By Mr. Diamond:

Q. Mr. Ezzell, did you, as auditor, know in 1930 of the declaration of the dividend?           A. Yes.

(Testimony of Marvin A. Ezzell.)

Q. When did you know about it?

A. About the time it was declared.

Q. Did you know that on September 17, 1930, United Artists Studio Corporation, Ltd., credited on its books Feature Productions with a pro rata share of Feature Productions in the dividend that was declared?

A. You say on September 17, 1930?

Q. No. Did they know that on September 17? Did Feature Productions know of the crediting that was done on September 17, 1930?

A. Well, I would have to say that Feature Productions knew, because Brentinger was Feature Productions' general manager. [100]

Mr. Schmitt: If your Honor please, I again object to that type of response.

By Mr. Diamond:

Q. Did you know, Mr. Ezzell?

A. I cannot say for a certainty that I knew as of that particular date.

Q. When did you know?

A. No later than as of the time we received the next report from the Studio Corporation.

Q. When would that be?

A. No later than the time that the report for the month of September would have been made available.

Q. Mr. Ezzell, have you in your possession the ledger sheet of United Artists Studio Corporation showing the capital stock of United Artists issued and outstanding on July 1, 1930?



(Testimony of Marvin A. Ezzell.)

A. I believe it is here.

The Court: We will take a recess for ten minutes.

(Recess taken.)

By Mr. Diamond:

Q. Mr. Ezell, I show you a book and ask you what that book is?

A. General ledger of United Artists Studio Corporation, Ltd. [101]

Q. Is that the original ledger book?

A. Yes.

Q. Will you turn to the ledger sheet of United Artists Studio Corporation, Ltd., and advise us—turn to the capital stock account of United Artists Studio Corporation, Ltd., as of July 1, 1930?

A. I have.

Q. Do you have it, Mr. Ezzell?

A. I have it.

Q. Will you advise us as to the amount of capital stock of United Artists Studio Corporation, Ltd., issued and outstanding on July 1, 1930, as shown by the general ledger? A. \$867,200.

Q. Will you now turn to the ledger sheet of United Artists Studio Corporation, Ltd., showing the surplus of that company as at July 1, 1930?

A. I have it.

Q. Will you advise us as to what that sheet shows the surplus of the company to be as of July 1, 1930? A. \$262,586.10.

Q. Will you turn to the ledger sheet of the United Artists Studio Corporation, Ltd., showing the capital account of that company as of July 1, 1931? A. I have it. [102]

(Testimony of Marvin A. Ezzell.)

Q. Will you advise us as to what the balance of the capital stock account was on that date?

A. \$967,100.

Q. Is that the total amount of the capital stock of United Artists Studio Corporation, Ltd., on that date, as shown by that ledger sheet?

A. That is correct.

Mr. Schmitt: What were those figures, please, again, on July 1, 1930—

The Witness: On July 1, 1930, \$857,200; on July 1, 1931, \$967,100.

By Mr. Diamond:

Q. Will you be good enough to turn to the ledger sheet showing the surplus account of United Artists Studio Corporation, Ltd., as of July 1, 1931?      A. I have it.

Q. What does the ledger sheet show that surplus to be on that date?      A. \$58,971.12.

Q. Mr. Ezzell, have you prepared from the original records of the corporation a balance sheet of the corporation as of September 17, 1930, and one as of December 15, 1930?      A. No.

Mr. Diamond: Strike that—I withdraw the question. [103]

Mr. Schmitt: Will your Honor rule on that withdrawal?

The question was asked and the answer made, and I would like it to stay in the record.

The Court: Do you have any objection to the withdrawal?

Mr. Schmitt: Yes. The answer was "No." It was negative.

(Testimony of Marvin A. Ezzell.)

The Court: All right, let it stand.

By Mr. Diamond:

Q. Mr. Ezzell, would it have been possible for you to construct a balance sheet from the records you have as of that date? A. No.

Q. Could you turn to the general ledger from which you have just read and advise us what the net assets of United Artists Studio Corporation, Ltd., were on July 1, 1930, and again on July 1, 1931?

A. Net assets on July 1, 1930, were \$262,586.10, and on July 1, 1931, \$58,971.12.

Q. I am asking you for the net assets of United Artists Studio Corporation, Ltd?

A. I cannot answer that from this book; I am sorry.

Q. Could you advise us as to the net worth of United Artists Studio Corporation, Ltd., on those two [104] dates?

A. The net worth of the Studio Corporation on those two dates would be the sum of the figure given as capital stock issued and the surplus, the combination of the two figures that have been given.

Q. Could you tell us how much that was? Could you make the computation for us?

A. I think so. On July 1, 1930, \$1,129,786.10; on July 1, 1931, \$1,026,071.12.

Q. Mr. Ezzell, in the actual operation of United Artists Studio Corporation, Ltd., back in the period



(Testimony of Marvin A. Ezzell.)

around 1930 did the corporation have occasion to borrow money?

A. Prior to 1930 and subsequent to 1930, yes.

Q. From what sources was it able to borrow?

A. It was able to borrow from its controlling stockholder, Feature Productions, Inc., Ltd., and from commercial banks.

Q. Were these borrowings in substantial amounts?      A. Yes.

Q. Mr. Ezzell, on Joint Exhibit C, which is attached to the stipulation of facts in this case, I notice that Samuel Goldwyn, Inc., Ltd., is credited with two amounts: one, the amount of \$20,979, and the other an amount of \$1,565.67.

Will you tell us what the amount of \$20,979 represents? [105]

A. It represents a dividend of \$21 a share on 999 shares of capital stock of United Artists Studio Corporation, Ltd.

Q. What was the amount of \$1565.67?

A. That represents an erroneous entry placed on the books, based on a misconception of an agreement which was in existence at that time between Samuel Goldwyn, Inc., Ltd., and United Artists Studio Corporation Ltd., and the entry was corrected subsequently.

Q. Was the entry reversed subsequently?

A. It was reversed subsequently.

Mr. Diamond: If your Honor please, on behalf of respondent and petitioner I want to offer at

(Testimony of Marvin A. Ezzell.)

this time as Joint Exhibit, journal entries of United Artists Studio Corporation, Ltd., under date of May 27, 1933, being journal entry No. 896.

The Court: It will be received in evidence and marked Exhibit 4-D.

(The document referred to was admitted in evidence and marked Exhibit 4-D.)

[Exhibit 4-D is set out in full at page 153 of this printed record.]

Mr. Diamond: I offer in evidence journal entry of United Artists Studio Corporation, Ltd., No. 897.

The Court: It will be admitted in evidence and marked Exhibit 5-E. [106]

(The document referred to was admitted in evidence and marked Exhibit 5-E.)

[Exhibit 5-E is set out in full at page 154 of this printed record.]

Mr. Diamond: I offer as a further joint exhibit a photostatic copy of general ledger sheet, headed, "Dividends Payable," being account No. 105 on the books and records of United Artists Studio Corporation, Ltd.

The Court: Exhibit 6-F.

(The document was marked Exhibit 6-F and admitted in evidence.)

[Exhibit 6-F is set out in full at page 156 of this printed record.]

Mr. Schmitt: Will you call attention to those things marked on there?

Mr. Diamond: If your Honor please, I want to

(Testimony of Marvin A. Ezzell.)

note for the record that Exhibit 5-E, being journal entry No. 897, contains two yellow slips being dated May 27, 1943.

By Mr. Diamond:

Q. Mr. Ezzell, I show you the account sheets of United Artists Studio Corporation, Ltd., of 1933, which have previously been offered as a joint exhibit of petitioner and respondent, and ask you what they represent?

A. The first document is journal entry No. 896, dated May 27, 1933. It represents a charge to dividends payable account of Mary Pickford-Fairbanks and of Douglas Fairbanks, and a credit to the dividends payable account of Feature Productions, Inc., Ltd., in the amount of [107] \$28,000.

Q. You mean Feature Productions, Inc., Ltd., or United Artists Studio Corporation, Ltd.?

A. Credit to the account of Feature Productions, Inc., Ltd.

Q. Are all of these entires that I have referred to credits made in 1933 to the accounts of individual stockholders? A. Yes.

Q. Will you tell us why those credits were not made in 1930? A. Well---

Q. Tell us why they were made in 1933?

A. They were made in 1933 because at that time the United Artists Studio Corporation, Ltd., received instructions from the shareholders as to the disposition of the dividends which had been credited to their accounts.



(Testimony of Marvin A. Ezzell.)

Q. Had any instructions been received from stockholders prior to 1933?      A. No.

Q. Will you tell us why these entries could not have been made in 1930, either on September 17, or December 15, if you know?

A. In my opinion—

Mr. Schmitt: That is exactly what I made that [108] interrogation for, if your Honor please.

The Court: State what you know, but not what you think.

A. (Continuing): In 1930 the accounts receivable of the various stockholders were broken down by individual picture accounts, whereas at a subsequent date the accounts receivable were consolidated into one account for each stockholder, and it would not have been feasible to attempt to credit the dividend against the numerous accounts which were by picture in 1930.

By Mr. Diamond:

Q. Mr. Ezzell, in 1933, you stated you were auditor of United Artists Studio Corporation, Ltd.?      A. That is correct.

Q. Were these 1933 entries made by you?

A. Yes.

Q. All of them?

A. Yes. May I see them again, to make sure I made all of them?

(Mr. Diamond hands book to the witness.)

A. (Continuing): The journal entries were made by me; both of them. The two credit memor-

(Testimony of Marvin A. Ezzell.)

anda were prepared under my instructions and approved by me or initialed by me, and the entries on the dividend payable ledger sheets were prepared by people charged with the responsibility [109] of making the proper entries on the books under my supervision.

Mr. Schmitt: What year were those ledger entries?

The Witness: 1933 I am speaking of.

Mr. Schmitt: And not in 1930 or 1931?

The Witness: No.

Mr. Diamond: That is not the question.

I want to note for the record that the witness is testifying as to Joint Exhibit 4-D, Joint Exhibit 5-E and Joint Exhibit 6-F.

The Court: That is the testimony just given in answer to the question you asked?

Mr. Diamond: Yes, sir.

By Mr. Diamond:

Q. Will you state, Mr. Ezzell, under what authority you made these entries or directed that they be made?

A. The entries were made on the instructions of A. M. Brentinger, general manager of United Artists Studio Corporation, Ltd. His instructions were predicated on written instructions received from the shareholders.

Q. Were those instructions in writing, Mr. Ezzell?      A. They were.

Q. I show you letter of Feature Productions,

(Testimony of Marvin A. Ezzell.)

Inc., to United Artists Studio Corporation, Ltd., under date of [110] June 27, 1933, and another letter from and to the same persons under date of June 27, 1933, and ask you what these letters represent.

A. One of these letters represents instructions to United Artists Studio Corporation, Ltd., to retain the amount of dividend of \$136,327.17 and apply it on account of the indebtedness owing by Feature Productions, Inc.—apply it on account of the indebtedness owing by Feature Productions, Inc., Ltd., to United Artists Studio Corporation, Ltd.

The Court: Who was it signed by?

The Witness: A. M. Brentinger—instead of paying the amount to Feature Productions, Inc., Ltd., in money.

The other letter—

The Court: They both bear the same date?

The Witness: They both bear the same date.

The other letter represents instructions from Feature Productions, Inc., Ltd., to United Artists Studio Corporation, Ltd., to apply to the indebtedness of Feature Productions, Inc., Ltd., to United Artists Studio Corporation, Ltd., \$28,000, the dividend declared on September 11, 1930, these instructions being—

Mr. Schmitt: If your Honor please, I do not want the witness to read that letter and get in by indirection [111] what might be objected to if the letter is subsequently offered.



(Testimony of Marvin A. Ezzell.)

The Court: I think it would be proper to first identify the letter and authorize its introduction, instead of letting him quote from it.

Mr. Diamond: All right.

Mr. Clerk, I offer for identification letter of Feature Productions, Inc., Ltd., to United Artists Studio Corporation, Ltd., dated June 27, 1933.

The Court: Has the witness identified the letter? Does he know who wrote it?

Mr. Diamond: I will get that, your Honor. I am just identifying it now.

(The document referred to was marked Petitioner's Exhibit 1 for identification.)

Mr. Diamond: I offer for identification another letter from Feature Productions, Inc., Ltd., to United Artists Studio Corporation, Ltd., dated June 27, 1933.

(The document referred to was marked Petitioner's Exhibit 2 for identification.)

Mr. Diamond: I offer for identification a letter from Samuel Goldwyn, Inc., Ltd., by Abraham Lehr, vice-president, to United Artists Studio Corporation, Ltd., dated June 27, 1933. [112]

(The document referred to was marked Petitioner's Exhibit 3 for identification.)

Mr. Diamond: I offer letter of Abraham Lehr to United Artists Studio Corporation, Ltd., dated June 27, 1933, for identification.

(The document referred to was marked Petitioner's Exhibit 4 for identification.)

(Testimony of Marvin A. Ezzell.)

By Mr. Diamond:

Q. Mr. Ezzell, I show you Petitioner's Exhibit 1, 2, 3 and 4, and ask you whether it was pursuant to such exhibits that the 1933 entries were made.

A. It was.

Q. I ask you whether you are familiar with the signature of A. M. Brentinger? A. I am.

Q. Is that his signature (indicating)?

A. It is.

Mr. Diamond: I am now referring to Petitioner's Exhibit 1 for identification.

By Mr. Diamond:

Q. I show you Petitioner's Exhibit 2 and ask you whose signature appears thereon.

A. That of A. M. Brentinger.

Q. Are you familiar with the signature of Abraham [113] Lehr? A. I am.

Q. Will you look at Petitioner's Exhibit 3 for identification and advise us whose signature appears thereon? A. That is Abraham Lehr.

Q. I ask you to look at Petitioner's Exhibit 4 for identification and state whose signature appears thereon. A. That of Abraham Lehr.

Mr. Diamond: If your Honor please, I offer in evidence Petitioner's Exhibits previously marked 1, 2, 3 and 4 for identification.

The Court: Any objection?

Mr. Schmitt: I object to them, if your Honor please, because I think it is immaterial what action the stockholders have taken in this matter. I think the book entries show what action the cor-

(Testimony of Marvin A. Ezzell.)

poration took. I think it is immaterial what the distributees or those who received this dividend in 1933—what motivated them.

I further object to it on the ground that it is the letter, in one instance there, of a man who is deceased, and it contains certain matters that are not relevant to the entry which was made in 1933. It refers back in a self-serving manner to something that transpired in 1930, and to let the whole letter go in, showing the [114] attitude of the recipient, I do not think is material to what action really took place on behalf of the Studio Corporation.

The Court: That would go, I think, rather to the effect of the testimony than to its admissibility.

I will overrule your objection.

Mr. Schmitt: Exception.

(The documents referred to were admitted in evidence and marked Petitioner's Exhibits 1, 2, 3 and 4.)

[Petitioner's Exhibits 1, 2, 3 and 4 set out in full, pages 158 through 161 of this printed record.]

Mr. Diamond: I am through with the witness.

The Court: Does counsel for respondent want to cross examine?

Mr. Schmitt: Yes, if your Honor please.

Cross Examination

By Mr. Schmitt:

Q. You said that you were auditor for the Feature Productions in 1930?           A. Yes, sir.



(Testimony of Marvin A. Ezzell.)

Q. How long did you continue in that capacity?

A. Until the day preceding the day I joined the United Artists Studio Corporation, Ltd., as auditor in January, 1932.

Q. You no longer had any connection as auditor of Feature Productions after you went over with Studios; is [115] that correct?

A. That is correct.

Q. How long did you remain as auditor of Studios?

A. Until I became business manager of Studios on August 5, 1935.

Q. 1935?           A. Yes.

Q. During the period prior to 1932 where did you have your office?

A. In the building occupied as an office building by Feature Productions on the premises of United Artists Studio Corporation, Ltd.

Q. Did anyone succeed you as auditor there?

A. Yes. I am trying to think who did.

Q. Then he became the custodian of the books and records?           A. Yes.

Mr. Diamond: Of what corporation are you talking?

Mr. Schmitt: Of Feature Productions. I mentioned, of course, prior to 1932.

By Mr. Schmitt:

Q. Where are those books now; the Feature Production Company's books?

A. I do not know. I understand that they have [116] been destroyed. I do not know.

(Testimony of Marvin A. Ezzell.)

Q. After you took over new responsibilities in 1935 who succeeded you as auditor?

A. W. H. Tuck.

Q. He became the custodian of those books and records of Studios?

A. That is right, the direct custodian of them.

Q. I beg your pardon.

A. The direct custodian of them.

Q. Where did you get these journals and ledgers that were brought into court?

A. I got them from Axel Nissen, who is now the auditor for Samuel Goldwyn Studios.

Q. Where were they physically?

A. Located in a vault on the premises of United Artists Studio Corporation, Ltd., or Samuel Goldwyn, as it is now known.

Q. Did you prepare any returns for Feature Productions?      A. Yes.

Q. Did you prepare any from the year—

The Court: You mean income tax returns?

By Mr. Schmitt:

Q. Income Tax returns?      A. Yes. [117]

Q. For what years?

A. I would have to see them to be certain.

Q. During the time that you were the auditor—

A. Yes.

Q. (Continuing): —did you prepare any returns for Douglas Fairbanks, Mary Pickford—

A. I did not.

Q. —or for Joseph M. Schenck?

(Testimony of Marvin A. Ezzell.)

A. I did not.

Q. Pickford-Fairbanks Studio?

A. I did not.

Q. Pickford-Fairbanks Studios; is that a corporation?      A. That was a corporation.

Q. That was a corporation? In 1930?

A. I believe it had been dissolved prior to 1930.

Q. Samuel Goldwyn, Inc., is a corporation, Samuel Goldwyn, Inc., Ltd.?

A. It was a corporation.

Q. It was a corporation?      A. Yes.

Q. Did you prepare income tax returns for Studios in 1932?      A. Yes.

Q. How about 1930 and 1931? [118]

A. No.

Q. 1933?

A. I believe so. I would have to see the returns.

Q. I will ask you to look at these returns of United Studio Corporation, which later on was called United Artists Studio Corporation, Ltd., for 1930, '31, '32 and '33, and tell me who signed those.

A. For the fiscal year of '30-31 it was signed by R. P. Fairbanks, president; and A. M. Brentinger, vice-president.

Q. Is this the signature (indicating)?

A. Yes.

Q. Which should correspond with the signature on that letter, shouldn't it?      A. It should.

Q. Do you know who the auditor of Studio Corporation was in 1931?      A. Yes.



(Testimony of Marvin A. Ezzell.)

Q. Do you notice his name on the return?

A. Yes; that of L. B. Smith.

Q. And he was the custodian of the books of Studio?      A. According to the return he was.

Q. That is the same for the year 1932—who was the auditor and the custodian of the books?

A. M. A. Ezzell. [119]

Q. And for the year 1930?

A. Irwin Luttermoser.

Q. In the year 1933—do you know who the auditor was for that year?

A. May I see the return?

(Mr. Schmitt hands paper to witness.)

A. I do not know. I know that I was auditor, but I cannot say who the return would indicate as having returned it.

Q. You were not auditor prior to these other returns?

A. I was auditor commencing with early January, 1932.

Q. But you were not the auditor who prepared the returns to which other names have been signed and which names have been called off?

A. That is correct.

Q. (Continuing): Mr. Smith and—

A. Mr. Luttermoser.

Q. —and some other third gentleman?

A. I think those were the only two that were read.

Q. Yes, I think that is right. As a matter of

(Testimony of Marvin A. Ezzell.)

fact, you do not know anything, of your own knowledge, about Studios Corporation's books and affairs in 1930? [120]      A. Yes, I do.

Q. What is the basis of your knowledge?

A. The basis of my knowledge is the reports that were supplied to me as auditor for Feature Productions, by United Artists Studio Corporation, Ltd.

Q. You were not the active bookkeeper or auditor during that period?

A. Of what company?

Q. Of the Studios Corporation?      A. No.

Q. Do you know who made the entry in the general ledger September 17, 1930, which is account No. 105, which has been introduced—

Mr. Diamond: Would you show that to the witness?

A. Not without seeing it, I wouldn't know.

Mr. Schmitt: I am sure that he would not, in view of his previous answer.

The Witness: This particular penmanship you are asking about?

Mr. Schmitt: Yes.

The Witness: I cannot identify it.

Mr. Diamond: What are you showing the witness? There are several handwritings on that.

Mr. Schmitt: September 17, 1930, entry.

Mr. Diamond: And only those entries; is that [121] right?

Mr. Schmitt: That is right.

(Testimony of Marvin A. Ezzell.)

By Mr. Schmitt:

Q. So anything that you might have said in respect of why something was done or something was not done by Studios Corporation in 1930 is just a surmise?

Mr. Diamond: I object to that, your Honor. That is trying to characterize what the witness said.

The Court: That is cross examination. I think he has a right to ask that.

A. I do not think you can say that anything I might have said—because that is a question of my remembering everything that may have happened, and our organizations were rather close to each other and we knew pretty well what was going on.

By Mr. Schmitt:

Q. They were separate individuals and separate corporations, were they not? A. Yes.

Q. And you know that they filed income tax returns? A. I have seen them.

Q. You do not know what various businesses Mary Pickford was engaged in, commercial enterprises, do you?

A. Not all of them; quite a few of them, yes.

Q. This was only a small part, wasn't it—this [122] \$20,000?

A. I would not measure the proportion of it. But it was a part.

Q. And Douglas Fairbanks, the same? He was



(Testimony of Marvin A. Ezzell.)

a man of large investments and holdings and enterprises during that period?

A. So I understand.

Q. And Mr. Schenck and the other stockholders in like manner?

A. Well, Mr. Schenck; and if you will name the other stockholders I will give an answer on them.

Q. What I would like for you to do is to point to something in the books or something in the records, other than a surmise, as to why Studios made or did not make these entries in 1930 in respect of these recipients?

A. Which particular entries do you mean?

Q. The entries I am speaking of are the credits that were made in 1933 to these people, and you have attempted to give some reasons why they were not made in 1930. A. Well—

Q. I want you to point to some book or record to substantiate that.

A. I believe we have in court some accounts receivable ledger sheets which show that in 1930 the accounts with the stockholders were segregated by charges [123] against various pictures and that at a later time those charges were not so segregated.

Q. You spoke of accounts receivable from these various stockholders? A. Yes, sir.

Q. And you cited some figures of \$90,000 and \$85,000 odd? A. Yes, sir.

(Testimony of Marvin A. Ezzell.)

Q. Those figures represented the year 1930, did they not?

A. They represented a particular time or times of 1930.

Q. Will you turn to the books and find out what the status of those receivables were in 1931, '32 and '33, and I would like also to see the one for 1930? A. What particular times?

Q. I want the same dates that you used before: September 15 and December 15, 1931.

Mr. Diamond: You mean September 17, Mr. Schmitt?

Mr. Schmitt: I thought when you were giving the \$85,865.06 that was September 15. But either date will do.

Mr. Diamond: In other words, you were asking the witness—

Mr. Schmitt: To carry on for the years '31, '2 [124] and '3 the same as he did for the year '30.

Mr. Diamond: I am not sure I understand what you want from the witness.

These amounts vary at different times during the year. Do you want the highest amount?

Mr. Schmitt: He picked out the date when the dividend was declared and the date when the dividend was payable, both in 1930.

Mr. Diamond: That is not correct. He picked out the date in 1930 when the individual stockholders were credited with their prorata share of the distribution. That date is September 17, 1930.

(Testimony of Marvin A. Ezzell.)

Mr. Schmitt: The stockholders' accounts were credited on that date?

Mr. Diamond: Yes.

Mr. Schmitt: Where is that entry??

Mr. Diamond: That will appear on Exhibit 3-C.

Mr. Schmitt: That is right.

Mr. Diamond: If your Honor please, I notice here the photostatic copy is not particularly clear. I would like the record to show by agreement of counsel, if Mr. Schmitt is agreeable, that the date of journal entry which is Exhibit 3-C of the stipulation, is September 17, 1930, pursuant to the allegations of paragraph 9 of the stipulation. [125]

Mr. Schmitt: Repeat that, will you please?

Mr. Diamond: Will you read that back?

(Record read by reporter.)

Mr. Schmitt: That is agreeable.

That is Exhibit 3-C of the exhibit?

Mr. Diamond: If I may complete my statement now, if your Honor please—I asked the witness the status of the accounts receivable from the individual stockholders on those two dates, September 17, 1930, and December 15, 1930.

My difficulty with Mr. Schmitt's line of inquiry is that it asks the witness in effect to read the balance on 365 days of the year in 1931, '32 and part of 1933, and I do not think the witness should be called on to read daily balances.

Mr. Schmitt: If your Honor please, I will re-frame the question.



(Testimony of Marvin A. Ezzell.)

By Mr. Schmitt:

Q. The dates I select are the 1st of January and December 31, 1931, '32 and '33.

Mr. Diamond: If your Honor please, I will object to those on the ground that the question seeks to elicit immaterial responses. The status of those accounts during the intervening years is not in issue in the case. [126]

The Court: I think legitimate cross examination might permit some latitude.

Mr. Diamond: All right, sir.

A. The records that we have here do not show what the balances were on the 1st of January of 1931.

By Mr. Schmitt:

Q. What do the books show? The books are complete, aren't they?

A. Not to that extent.

Q. What are they? I want to find out if we have just a partial—

A. May I explain?

Q. Yes, go ahead.

A. Commencing with some time in 1931 the then auditor of the Studio Company conceived an idea of handling accounts receivable in a very unorthodox manner.

Mr. Schmitt: Your Honor, I object to that.

Mr. Diamond: You asked the witness to explain, Mr. Schmitt. I suggest you permit him to finish.

Mr. Schmitt: I do not want him to explain in that sort of fashion, criticizing and stultifying his

(Testimony of Marvin A. Ezzell.)

own books and records. I think that is illegitimate, coming in and saying, "We want you to accept books at face value," and then saying, "They are unorthodox and undependable." [127]

The Witness: I do not say they are undependable. I said we have them. I was going to explain that they are not the kind of records you can work from in a limited time or space, because you have to spread the sheets out because the balances were not carried in the way I have them carried here.

By Mr. Schmitt:

Q. What books do you have in court in response to all the inquiries, and so forth? Do you have a complete journal?

A. I think we have complete journals affecting the accounts that we understood would be affected. I do not think we have every journal entry that affected every account in the books, sir.

Q. But you have every journal entry affecting these particular accounts?

A. I think so, sir. We have the accounts receivable commencing with —

The Court: This is the original book of entries that you used?

The Witness: Yes, sir.

The dates you wanted were January 1 and December '31, and the first year was what?

By Mr. Schmitt:

Q. '31. [128]

A. '31?

(Testimony of Marvin A. Ezzell.)

Q. Yes.

A. I find that we do have January 31 figure.

Q. January 1, '31?

A. No. And the reason for that is that the entries were made on week-ending dates. They are not necessarily the 1st day or the last day of the month.

Q. Well, approximately is all I am trying to get; the beginning and end of the year, approximately.

A. I would have to have paper and pencil to do some computing here.

Mr. Schmitt: I do not know whether it will save any time for your Honor for him to make those computations.

The Court: Will it take you a while to do that?

The Witness: Quite a while.

The Court: About how long?

The Witness: Well, at least a half hour. At least that; probably longer. I have no objection whatever to doing it.

Mr. Diamond: Would it be agreeable to Mr. Schmitt if we have the highest balances of the years you want?

Mr. Schmitt: These books do not seem to me to [129] be in too good a shape, and I would like to have just what I asked for.

The Court: I think you have a right to go into that, testing the validity and accuracy of the books.

How much more testimony do we have, after this witness?



(Testimony of Marvin A. Ezzell.)

Mr. Diamond: I am through with this witness, your Honor, and I do not believe I have any additional testimony.

Mr. Schmitt: I do not believe I have any further testimony.

The Court: We will take a recess for 20 minutes, and see how far we can get.

(Recess taken.)

The Court: As I understand the agreement of counsel, the witness will make his computations and they will be submitted to respondent's counsel by Wednesday morning, together with the books from whence computation was made, and then on Thursday we will take the matter up again.

Mr. Diamond: Your Honor, the witness has just told me that he will be unable, from what he has there, to make a computation of December, 1931.

The Witness: I can get after January 1 of that particular year. [130]

By Mr. Schmitt:

Q. You cannot get the end of the year?

A. Not that particular year; not 1931.

Q. How about 1932?

A. Yes, I can get that.

Q. All right, get me the beginning of '31, both of '32 and both of '33. A. Yes, sir.

The Court: Is that understood now?

Mr. Diamond: Yes, sir.

The Court: All right, then that will be furnished to counsel for respondent Wednesday morn-

(Testimony of Marvin A. Ezzell.)

ing, together with the books from which it was made, and then on Thursday we will see if some agreement can be had with reference to it.

Is there any other question you would like to ask this witness?

Mr. Schmitt: I would like to. Will your Honor run on for half an hour?

The Court: I thought we would get through with the witness if we could.

By Mr. Schmitt:

Q. Would you mind describing the physical location of this studio again? Is it all one unit?

A. Yes, sir, occupying the location at the intersection [131] of Santa Monica Boulevard and Formosa Avenue in Los Angeles, California.

Q. You were not auditor for anyone other than Feature Productions in 1930, were you?

A. In 1930 we kept several sets of books for Mr. Joseph M. Schenck's various enterprises. I was auditor for him, handled those books in connection with my position as auditor for Feature Productions.

Q. You were not auditor for Douglas Fairbanks?      A. No, sir.

Q. Or Mary Pickford?      A. No, sir.

Q. Or any of the other stockholders or recipients, except Feature Productions?

A. Well, specifically at that time I was not auditor for Samuel Goldwyn, Inc., Ltd., I was not auditor for Mary Pickford or for Douglas Fairbanks or for Pickford-Fairbanks Studios Co.

(Testimony of Marvin A. Ezzell.)

Q. And you were not auditor for Studios Company?

A. No, I was not auditor for Studios Company in 1930.

Q. So of your own knowledge you do not know how Studios treated the accounts of these stockholders whom you did not—

Mr. Schmitt: Counsel is nodding his head in [132] agreement. He is distracting me.

Mr. Diamond: Not I.

Mr. Tannenbaum: He does.

Mr. Schmitt: I know, but I am asking the witness.

Mr. Tannenbaum: I am sorry.

Mr. Schmitt: No offense.

A. Would you mind restating your question, sir?

By Mr. Schmitt:

Q. So you do not know, of your own knowledge, just how Studios treated the running accounts of these stockholders? A. At what time?

Q. In 1930, you not being the auditor?

A. Well, I know by having reports prepared.

Q. What reports?

A. Periodic reports that were made—

Q. Where are they?

A. Where are they?

Q. Yes.

A. I do not even know that copies are in existence today.



(Testimony of Marvin A. Ezzell.)

Q. What kind of reports?

A. Weekly—monthly reports, and at times—

Q. But you might have received those reports from Feature Productions, but you do not know that Mary Pickford [133] received them.

A. No. I only know this, sir, that Studio Corporation did prepare such reports and copies of such reports came to me as auditor of Feature Productions, Inc., Ltd.

Q. You do not know whether the others—

A. Not of direct knowledge.

The Court: For what purpose were those reports prepared?

The Witness: They were prepared primarily to give the stockholders a running knowledge of the conditions and operations of the company.

The Court: Was it the business of the corporation to furnish the stockholders these reports?

The Witness: I do not know whether it was the business or not.

The Court: Do you know whether or not it was done?

The Witness: It was done, so far as Feature Productions was concerned, that I know of direct knowledge.

By Mr. Schmitt:

Q. But you do not know what Studios did or what its practice was in 1930 and '31, do you?

Mr. Diamond: Yes, he does, Mr. Schmitt. He [134] has the Studio books there.

(Testimony of Marvin A. Ezzell.)

Mr. Schmitt: All right, let him show the reports.

By Mr. Schmitt:

Q. Point to the books, then. Counsel says you have it. Point to the books which will show the practice of Studios in sending out reports in 1930, '31 and '32. I would like to have those documents.

Mr. Diamond: No, he stated that on his own knowledge.

Mr. Schmitt: The books will not show the practice of that corporation during those years?

By Mr. Schmitt:

Q. Will it?

Mr. Diamond: I do not think books ever do.

Mr. Schmitt: He said, "No," and you interrupted to say that he did know when I asked him did he know.

Mr. Diamond: You asked him whether he knew of his own knowledge how those dividends were treated on the books of the corporation.

Mr. Schmitt: I did not say anything about dividends.

Mr. Diamond: I thought you had. If you have not I withdraw my statement. [135]

By Mr. Schmitt:

Q. Where is the minutes book of Studios?

A. In the courtroom.

Q. You are familiar with this minutes book (indicating)?

A. Generally, so, yes, sir.

(Testimony of Marvin A. Ezzell.)

Q. Is there anything in this minutes book, any resolution or anything which gives any reason why the dividend declared September 11, 1930, was not paid on December 15, 1930?

A. There is nothing in here touching on that.

Q. There is no extension, no references to that in that minutes book, other than the resolution declaring the dividend on September 11, 1930?

A. That is right.

Q. You spoke of some loans that were made by the Studios, I believe in your direct testimony?

A. Yes, sir.

Q. Is that reflected in the minutes?

Mr. Diamond: What do you mean by "Studios," Mr. Schmitt?

Mr. Schmitt: By "Studios Corporation" I think he testified that "Studios from time to time had borrowed money."

Mr. Diamond: Yes. [136]

Mr. Schmitt: I may be mistaken in that.

The Witness: That is correct.

Mr. Diamond: He made that statement. But what is your question?

Mr. Schmitt: I am asking him is there anything in the minute book to show that any such loans were made.

Mr. Diamond: I see.

The Witness: There is.

By Mr. Schmitt:

Q. There is?                      A. Yes, sir.



(Testimony of Marvin A. Ezzell.)

Q. Will you point to it?

A. There is a resolution, dated January 2, 1929, having reference to loans made by Feature Productions to the Studio Corporation.

Q. Does it state any amount?

A. The amount stated is \$25,000 loaned on each of two dates.

Q. \$50,000.

A. Making a total of \$50,000.

Q. Are there any other loans in here?

A. I would have to examine it with that in mind.

There is reference on June 18, 1929, to loans made on June 14, 1929, sir. [137]

Q. I really meant since 1930.

A. I beg your pardon.

Q. That is all right. I really should not have circumscribed it.

A. There is a resolution passed at a meeting on December 12, 1931, authorizing the borrowing of \$25,000 from the Bank of America.

Q. The Bank of America?

A. Yes, sir. Shall I go further?

Q. Yes. Just run through it quickly, not past '33.

A. I do not find any further loans.

Q. That represents them all?

A. I do not say that represents all of them. That represents all that I see, looking through that book.

Q. Do you have any better evidence as to loans, than the minutes?

(Testimony of Marvin A. Ezzell.)

A. I might have something here. I would like to look if I may, at the general ledger. (Consulting book.) I find no others.

Mr. Schmitt: That is all the cross examination I have, if your Honor please.

The Court: Is there any redirect examination of the witness?

Mr. Diamond: Yes. It won't take long, your Honor. I have just a few questions. [138]

Redirect Examination

By Mr. Diamond:

Q. Mr. Ezzell, was there any borrowing by United Artists Studio Corporation, Ltd., in 1931?

A. Yes.

Q. Go ahead.

A. There appears to have been a loan made by the Bank of America in December, 1931.

Mr. Schmitt: Is that the same one referred to in the minutes?

The Witness: I assume that it was, sir.

By Mr. Diamond:

Q. In what amount was that loan, Mr. Ezzell?

A. \$25,000.

Q. Mr. Ezzell, referring now to the debit balances in those accounts receivable from the individual stockholders of United Artists Studio Corporation, Ltd., at my request did you make a computation of the highest amount of those balances in 1930, '31, '32 and '33, 1930 being the portion of 1930 after September 17, and a portion of 1933 up until July 1, 1933?

A. Yes.

(Testimony of Marvin A. Ezzell.)

Q. Will you tell us what the highest amount of the debit balances was in the aggregate in the period between September 17 and December 31, 1930?

A. When you say, "in the aggregate," do you mean by individual companies?

Q. Yes.

A. Well, Mary Pickford Co., November 26, 1930, the amount was \$26,614.32; for 1931, Mary Pickford Co., March 21, 1931, \$4,390.06; Mary Pickford Co., December 31, 1932, \$40,471; Mary Pickford Co., January 21, 1933, \$25,585.56.

Feature Productions, December 3, 1930, \$130,338.41; Feature Productions, February 11, 1931, \$43,489.84; Feature Productions, 1932, December 31, 1932, \$237,456.46; Feature Productions, February 18, 1933, \$240,783.44.

Samuel Goldwyn, Inc., Ltd., September 10, 1930, \$96,593.49.

Mr. Schmitt: Those are Studios' receivables?

The Witness: Yes, sir.

A. (Continuing): Samuel Goldwyn, Inc., Ltd., May 23, 1931, \$38,691.68; Samuel Goldwyn, Inc., Ltd., February 6, 1932, \$95,390.48; Samuel Goldwyn, Inc., Ltd., January 14, 1933, \$116,299.98.

Douglas Fairbanks Co., December 24, 1930, \$3,372.68; for the same company, May 23, 1931, \$1,555.63; for the same company, July 23, 1932, \$22,644.12; and for the same company, May 27, 1933, \$5,695.03. [140]



(Testimony of Marvin A. Ezzell.)

By Mr. Diamond:

Q. Mr. Ezzell, the figures you read for 1930 and for 1933 were for the portion of the year that I indicated to you before you started to answer the question; is that right? In other words, in 1930 the highest debit balance that you gave us for each stockholder would be for that portion of the year which occurred between September 17, 1930, and December 31, 1930? A. That is right.

Q. And that would be true as to 1933; from January 1, 1933, to June 30, 1933?

A. That is right.

Q. And that is according to the records you have before you at this time?

A. That is right.

Q. Mr. Ezzell, in your capacity as auditor of Feature Productions in 1930 was it your responsibility to direct the disposition of the dividend credits on the books of Feature Productions?

A. No.

Q. Whose responsibility was that?

A. That would have been the responsibility of A. M. Brentinger.

Q. Did Mr. Brentinger direct you, as auditor, as to what disposition to make of that dividend credit? [141] A. No.

Q. Do you know of your own knowledge whether any disposition was made of that credit on the books of Feature Productions?

A. I think I understand what you mean. My

(Testimony of Marvin A. Ezzell.)

recollection is that the credit was taken up on the books of Feature Productions—

Mr. Schmitt: If your Honor please, “his recollection was”; that is vague. Besides I think it is immaterial what disposition was made.

Mr. Diamond: I think it has the highest materiality, your Honor. It shows what action was taken with respect to that dividend by the stockholder to whom that dividend went. I think it is highly material.

The Court: What is the basis of the witness' statement?

The Witness: On two things, your Honor. On recollection and upon having seen an accountant's report of Art Cinema Corporation, the parent corporation of Feature Productions, Inc., Ltd., showing that that dividend had been taken in as income. By Mr. Diamond:

Q. In what year?

A. During the fiscal year of Art Cinema Corporation during which the dividend was declared.

Q. What fiscal year would that be, Mr. Ezzell?

A. It would have been the fiscal year ending June 30, 1941.

Q. And that dividend was taken into income by Feature Productions in its fiscal year ending June 30, 1931?

A. That is right.

Mr. Diamond: I have no further questions, your Honor.

(Testimony of Marvin A. Ezzell.)

Recross Examination

By Mr. Schmitt:

Q. Are you positive of that?

A. Positive of that, based on recollection, sir, and on having examined the copy of the accountant's report for that period.

Q. That has been 16 years ago, and you recall that that was returned by Feature Productions?

A. I said based on recollection and on having examined—

Q. I mean are you as positive about that as you can be about anything that happened 16 years ago?

A. Presumably so; practically so.

Q. Everything that you have testified to is on the same basis as your answer to this question here? [143]

A. It is to the best of my knowledge and belief.

Mr. Schmitt: I still think it is immaterial, if your Honor please.

The Court: Objection overruled.

By Mr. Diamond:

Q. Mr. Ezzell, when did you make the examination of the accountant's report?

A. Within the past few days.

By Mr. Schmitt:

Q. Do you have a copy of it?

A. Not with me.

Q. Where is it?



(Testimony of Marvin A. Ezzell.)

A. I do not know whether Mr. Diamond has it or not.

Q. Ask him and see if it is available.

Mr. Diamond: I do not believe that is available, your Honor, and I do not believe that counsel for respondent made any request for it.

By Mr. Schmitt:

Q. Did you have anything to do with the preparation of the Studio 1932 and '33 returns, income tax returns?

Mr. Diamond: When you say "studio," Mr. Schmitt, you mean—

Mr. Schmitt: That is short for United Artists Studio Corporation, and that is what I have meant all during the trial. [144]           A. Yes, sir.

By Mr. Schmitt:

Q. You did?           A. Yes.

Q. In the 1932 return of United Artists Studio Corporation, Ltd., about which you said you were familiar with it, how were these dividends declared in 1930 carried on the return balance sheet under item 18?

A. It was carried as a dividend payable.

Q. That amount of \$204,656.67 has been explained as being different from \$203,000 odd by that sum of \$1,565.67 which was washed out?

A. That is right.

Q. And in 1933 return how was it carried in the balance sheet on line 18?

A. As dividends payable.

Q. \$203,091?           A. That is right.

(Testimony of Marvin A. Ezzell.)

Q. And at the end of the taxable year, which was the fiscal year ended June 30, 1933, the entry is—  
A. Absent.

Q. Absent? A. Yes.

Mr. Schmitt: That is all the examination I have.  
By Mr. Diamond:

Q. Mr. Ezzell, I show you photostatic copy of the corporation income tax return for the fiscal year ended June 30, 1931, of United Artists Studio Corporation, Ltd., and ask you to advise me as to what was the amount of surplus of that corporation at the beginning of the said taxable year?

A. \$263,627.79.

Q. And what was the amount of surplus of United Artists Studio Corporation, Ltd., as shown by the aforesaid return as of the end of this taxable year?  
A. \$5,891.12.

Q. And what was charged against surplus in that year to account for the discrepancy?

A. There was charged against the surplus for that year the amount of the dividend declared.

Mr. Diamond: I have no further questions, your Honor.

I would like to offer in evidence at this time a letter from C. R. Krigbaum, Internal Revenue agent in charge, addressed to United Artists Studio Corporation, Ltd., under date of April 10, 1933.

The Court: Any objections?

Mr. Schmitt: Yes. I object to that, if your Honor please. [146]

Mr. Diamond: I want to show that the return

(Testimony of Marvin A. Ezzell.)

as to which this witness has been testifying both at the behest of respondent's counsel and at my behest has been accepted by the Bureau of Internal Revenue as correct.

Mr. Schmitt: The return will speak for itself, if your Honor please, and the correspondence and administrative action taken by the Commissioner and others are not competent evidence.

The Court: I think that has been the holding of the Court, that the actions of these representatives is not binding.

Mr. Diamond: I do not ask the Court to do anything except to be advised of the fact that the Bureau of Internal Revenue accepted as correct the income tax return that this witness has testified to.

The Court: May I see it, please?

Mr. Schmitt: I have never heard of that being competent.

Mr. Diamond: There is no reason why this is not competent.

Mr. Schmitt: I am going to introduce the returns.

The Court: This seems to be a formal letter—I sustain the objection.

Mr. Diamond: Mr. Schmitt, if you have nothing further of the witness I would just as soon he be relieved [147] at this time.

Mr. Schmitt: Yes.

The Court: You may step aside.

(Witness excused.)



Mr. Schmitt: Petitioner rests?

Mr. Diamond: Yes, I do.

Mr. Schmitt: Respondent offers in evidence the corporation income tax returns of United Studio Corporation, which name was changed in 1931 to United Artists Studio Corporation, Ltd., for the fiscal year ended June 30, 1930.

The Court: It will be received and marked Respondent's Exhibit A.

(The document referred to was admitted in evidence and marked Respondent's Exhibit A.)

[Respondent's Exhibit A set out in full, on page 162, of this printed record.]

Mr. Schmitt: For the fiscal year ended June 30, 1931.

The Court: Marked Respondent's Exhibit B.

(The document referred to was admitted in evidence and marked Repsondent's Exhibit B.)

[Respondent's Exhibit B set out in full, on page 169, of this printed record.]

Mr. Schmitt: Fiscal year ended June 30, 1932.

The Court: Exhibit C.

(The document referred to was admitted in evidence and marked Respondent's Exhibit C.)

[Respondent's Exhibit C set out in full, on page 178, of this printed record.]

Mr. Schmitt: Fiscal year ended June 30, 1933.

The Court: Exhibit D.

(The document referred to was admitted in evidence and marked Respondent's Exhibit D.)

[Respondent's Exhibit D set out in full, on page 186, of this printed record.]

Mr. Diamond: I have no objection, your Honor.

The Court: They will all be received in evidence and marked as indicated.

Mr. Schmitt: If your Honor please, I think you said on Thursday morning this tabulation will be presented and in the meantime the case will be kept open for the receipt of that evidence.

The Court: Is there any further evidence, other than that which is likely to be offered at that time?

Mr. Schmitt: The respondent has in mind at this time offering the returns of the Feature Productions Company which the witness testified to just now—the treatment of these dividends.

They arrived from Washington about two hours ago, and at that time on Thursday that matter can be taken up.

The Court: Very well.

Mr. Diamond: Will your Honor fix the time for briefs now?

The Court: The usual time. [149]

Mr. Diamond: That will do.

Mr. Schmitt: Yes, the usual time under the rules.

The Court: The court will stand adjourned.

(Whereupon, at 5:20 o'clock p.m., the hearing in the above entitled matter was adjourned to Thursday, Nov. 7, 1946, at 10:00 o'clock a.m.)

[150]

November 7, 1946

The Clerk: 8770, Samuel Goldwyn.

Mr. Schmitt: If your Honor please, you will

recall that this case was partially tried last Monday, the first day of the calendar, and it was held open for two matters; one in respect of some returns which I announced in court had just arrived from Washington, and the other matter was in respect of the accounts of the stockholders of United Artists Studios Corporation.

May I interpolate here to say that previously when I have referred to "Studios" I meant United Artists Studio Corporation.

These stockholders had accounts with Studios, and testimony was given on behalf of the petitioner, making reference to the status of these accounts, and there was also introduced a statement purporting to show the status of these accounts, and the witness had ledger references on the stand.

When I asked, on behalf of respondent, about the years subsequent to 1930 it developed that the witness had not prepared those and was not able, without going through voluminous sheets, to give me the answer, which would take perhaps a couple of hours of the Court's time, the case was held over for that purpose.

The petitioner was to furnish me with statements and [154] give me access to the books, so that my auditor could check the same.

Yesterday, Wednesday afternoon at 1:30, the books were brought up to my office for this tabulation and checking to be made.

And that is where the situation now stands.

And I would like, and have made the request of counsel, to give me some of these records from his



ledger, some of the sheets in respect of these accounts, Feature Productions, Douglas Fairbanks account, Mary Pickford account and Samuel Goldwyn, Inc., Ltd., account.

I think I am correct in stating that counsel—I had those sheets in my possession—and over the telephone, in conversation with Mr. Diamond, he asked me to return them.

I asked to keep them so I could present them in court, and he said—

The Court: Does the Court understand you say that you have not concluded checking these?

Mr. Schmitt: I have concluded checking them, if your Honor please, but I want the sheets, the records.

In other words, your Honor will recall that the petitioner's witness picked out two specific dates, September 17, 1930, and December 15, 1930. [155]

He had a vast number—

The Court: I recall that. I recall that the understanding was that they would furnish you the figures on that, in answer to the question that was made, and also that they would furnish you with the books.

Mr. Diamond: If your Honor please, I would like to interpolate at this point. That is what we did.

If your Honor will recall, Mr. Schmitt wanted the intervening balances made up, and the witness tried during the recess to do so, and was not able to.

We had the witness work on that all of the following day, and on Wednesday morning, yesterday

morning, I called Mr. Schmitt and advised him that the calculations were ready.

I then sent the calculations up to Mr. Schmitt, with the original records from which those calculations were made, and it is my understanding that Mr. Schmitt was satisfied with the computations that were made were correct.

Is that accurate, Mr. Schmitt?

Mr. Schmitt: That is only partially accurate, Mr. Diamond.

Mr. Diamond is under the impression that I asked just one specific question of this witness and that, with this witness, with all the books and records, that that [156] was the only thing I was interested in, that one particular question.

The witness was unable to supply me with answers I was willing to ask and I wanted these books so I could check on them.

When these records were furnished me in respect of these four accounts, I went over them and checked these figures.

In those accounts there appeared certain entries in respect of these accounts that were very germane and were tied in and were absolutely relevant and material to these accounts.

We have the loose sheets. There is no denial that they were regular entries in the course of business.

And I think that there would be a missing link, there would be an incomplete picture.

This Court, in order to make its findings of facts is entitled to have every legitimate book entry that

reflects on this particular item; not just half of it or a third of it, but all of it.

Each item here ties into journal entries and numbers, without which there can be no mistake—

Mr. Diamond: If your Honor please, I might be able to shorten the discussion a bit.

I do not have any desire to debate with Mr. [157] Schmitt what evidence ought to be presented to this Court or withheld from this Court. So far as I am concerned, anything that this Court thinks is relevant and that I have, this Court may have.

I do not agree with Mr. Schmitt as to how much of a trial he can have after the main trial is closed.

In any event, if Mr. Schmitt will tell me what he wants this morning, if I have it, I will be glad to present it.

Mr. Schmitt: You had it yesterday. It is four sheets of the month of May, 1940, which will show the item in respect of the dividends to Feature Productions, Douglas Fairbanks, Mary Pickford—

Mr. Diamond: Are these what you want (handing papers to counsel)?

Mr. Schmitt: Yes, sir.

The Court: What is the situation now?

Mr. Diamond: I do not know what they add to Mr. Schmitt's case, your Honor, but if he thinks they are helpful to this case I will be glad to submit them.

The Court: Do you want to check them?

Mr. Schmitt: I do not want to check them further, if your Honor please.

I would like to offer in evidence, if your Honor



please, the four tabulations which were furnished [158] me by counsel from the books in respect of the accounts of Douglas Fairbanks, Mary Pickford, Samuel Goldwyn, Feature Productions, together with four entries—

From what book would you call this, Mr. Diamond?

Mr. Diamond: Before we get to that, may I make a correction, your Honor?

I did not offer those exhibits that Mr. Schmitt is offering at this point.

I believe they were compiled by the witness and offered by the witness.

The Court: In response to a question by Respondent's counsel, I believe.

Mr. Schmitt: Yes.

Mr. Diamond: That is correct.

I would like to clear the record on that.

Mr. Schmitt: —together with these four sheets in respect of the accounts of Mary Pickford, Douglas Fairbanks, Feature Productions and Samuel Goldwyn, Inc., Ltd.

I think these are ledger sheets.

Do you recall the name of them? Ledger pages?

Mr. Diamond: If your Honor please, I do not see the relevancy of any of these exhibits, but I am not disposed to offer any objection to them.

The Court: They will be received in evidence and [158] marked Respondent's Exhibits E through L.

They are offered by respondent I believe?

Mr. Schmitt: Yes.

The Court: The clerk will properly number them.

(The documents referred to were admitted in evidence and marked Respondent's Exhibits E. to L.)

[Respondent's Exhibits E to L are set out in full at page 193 of this printed record.]

The Court: Is there anything further now?

Mr. Schmitt: Yes, sir. The respondent wishes to offer the returns, income tax returns, together with exhibits attached thereto, for the calendar year 1933, of Mary Pickford Fairbanks and Douglas Fairbanks.

The Court: Is there any objection?

Mr. Diamond: May I see those exhibits?

(Mr. Schmitt hands papers to Mr. Diamond.)

Mr. Schmitt: If your Honor please I would like the privilege of having photostats made of those and substituted.

The Court: Without objection, it is so ordered.

Mr. Diamond: If your Honor please, with respect to the exhibit which is the individual income tax return of Douglas Fairbanks, for the calendar year of 1933, there are a lot of miscellaneous papers attached to the returns, some of which did not form part of the return, originally. [160]

For example, there is a penciled copy of a revenue agent's report, which I think in any event is objectionable.

Mr. Schmitt: I agree to that.

The Court: Only the report itself, and not the correspondence is desired?

Mr. Schmitt: No, sir, there are some exhibits in there—

The Court: But such exhibits as are pertinent.

If you can agree on them now, so that there will be no misunderstanding—

Mr. Diamond: If your Honor please, there are several other returns that have been attached to this return. One is an information return of United Artists Studio Corporation, one is an information return of Guaranty Company of New York, and a third is an information return with respect to a Douglas Fairbanks trust.

Mr. Schmitt: Two of those I have no objection to, but that information return, Treasury Department Form 10, Code 99, in respect to the dividends paid by United Artists Studio Corporation to Fairbanks or Pickford, that is required to be attached to it.

Of course, that is a well recognized procedure.

The Court: See if counsel can agree with [161] respect to those.

Mr. Diamond: Your Honor, I am a little doubtful of both of these returns. These are returns of individuals who are not the taxpayers in this case.

The Court: The Court's understanding is that there is a question involved there that this might help to throw light on—

Mr. Diamond: I want it understood that my objection goes to the point that these are private, individual returns of individuals who are not taxpayers in this case and have not given their consent that their returns be disclosed and made public.



Mr. Schmitt: They are controlling stockholders of a closed corporation.

Mr. Diamond: These are not the controlling stockholders, Mr. Schmitt.

This is the return of Douglas Fairbanks for the year 1933, and another return of Mary Pickford Fairbanks for the same year. That is her own, private, confidential return. She is not the taxpayer in this case, and I do not think that confidential information with respect to her income ought to be spread on a public record, without some indication from her that she consents to it.

Mr. Schmitt: Apparently, if counsel will agree to reading into the record the salient points that affect [162] just this distribution, I will agree to that.

The Court: I think if you can agree on that, it would be well.

Mr. Diamond: All right.

Mr. Schmitt: We can do that very hurriedly.

The Court: Yes, you can do that now, and it will save a lot of time.

Mr. Schmitt: I will do the reading, and you can stop me.

Mr. Diamond: I will try.

Mr. Schmitt: It is agreed by counsel for both parties hereto that the following be read into the record and taken as evidence on behalf of respondents:

The individual income tax return for the calendar year 1933 of Douglas Fairbanks on the front page, under

“Income item 10 dividends on stock from domestic corporations \$12,159.55.”

Attached to the return is Form 1099, Treasury Department, Internal Revenue Service information return for the calendar year 1933, to Douglas Fairbanks, 1041 North Formosa Avenue, Los Angeles, California:

“To whom paid”—that is the party to whom it is paid—“kind and amount of income paid dividends \$8,881.91 by whom paid United Artists Studio Corporation, Ltd., 1041 North Formosa Avenue, [163] L.A., California.”

There is a notation under “Dividends”: “See other side.”

On the reverse side there is this:

“In addition to the dividend amount shown hereon there was due the above-named individual an additional dividend of \$14,000 which was paid by the undersigned corporation to Feature Productions, Inc., Ltd., by virtue of an assignment executed by Douglas Fairbanks.”

In respect of the individual income tax return for the calendar year 1933 of Mary Pickford Fairbanks, on the first page under “Income” there is:

“Item 10 Dividend on stock of domestic corporations \$4,586.31.”

Attached to the return is Treasury Department Form 1099 information return for the calendar year 1933:

“To whom paid Mary Pickford Fairbanks, 1041 North Formosa Avenue, Los Angeles, California, Kind and amount of income paid

dividends \$8,881.92 By whom paid United Artists Studio Corporation, Ltd., 1041 North Formosa Avenue, Los Angeles, California. See other side.”

“In addition to the dividend amount shown [164] hereon there was due the above-named individual an additional dividend of \$14,000, which was paid by the undersigned corporation to Feature Productions, Inc., Ltd., by virtue of an assignment executed by Mary Pickford Fairbanks.”

In addition there is also attached a copy of an agreement dated February 4, 1933, between United Artists Studio Corporation, Feature Productions, Inc., Art Cinema Corporation and Mary Pickford Fairbanks and Douglas Fairbanks:

Paragraph 4. “That United Artists Studio Corporation, Ltd., Feature Productions, Inc., Ltd., and Art Cinema Corporation agree to, with the undersigned Mary Pickford Fairbanks, Douglas Fairbanks that the Pickford-Fairbanks Studio and/or Mary Pickford Fairbanks are entitled to and shall retain all of the sums heretofore paid to them or either of them by said Feature Productions, Inc. pursuant to the aforesaid agreement for the purchase and sale of stock between Pickford-Fairbanks Studio Company, Feature Productions, Inc., Douglas Fairbanks, Mary Pickford Fairbanks, Dennis F. O’Brien, Robert Fairbanks, and N. A. McKay, and C. E. Ericksen, dated September 1, 1928, and in addition that the undersigned



Mary Pickford Fairbanks and Douglas [165] Fairbanks are entitled to receive as and when paid the dividend of \$45,763.83 heretofore declared on the aforesaid \$217,923 shares, but not paid by the said United Artists Studio Corporation, less an amount equal to the interest paid by you or any of you to the undersigned for the period from September 10, 1930, to the date when the last interest payment has been made by said Feature Productions, Inc., to the undersigned, that is, September 1, 1932, the agreed amount of interest being \$28,000; and the undersigned Mary Pickford Fairbanks and Douglas Fairbanks do hereby assign to Feature Productions, Inc., so much of the aforesaid dividend as amounts to the sum of \$28,000, leaving the balance of said dividend \$70,763.83 due to the undersigned; and directs United Artists Studio Corporation to pay said amount of \$28,000 as and when said corporation pays the balance of said dividend to the undersigned to Feature Productions, Inc. and accepts the receipt of that corporation as binding upon the undersigned to that portion of said dividend in so far as the interest of the undersigned is concerned therein."

The Court: Does that conclude the reading of the portion you want in?

Mr. Schmitt: Yes, sir. [166]

The Court: Is there anything further?

Mr. Diamond: Will your Honor indulge me for just a moment?

The Court: Surely.

Mr. Schmitt: I would like to have these exhibits, I, J, K and L withdrawn for the purpose of having photostats made, if that is agreeable.

The Court: It will be permitted.

Mr. Diamond: If your Honor please, on behalf of petitioner I desire to offer in evidence at this time corporation income tax return of Art Cinema Corporation and subsidiary companies being a consolidated return for the fiscal year ended June 30, 1931.

The Court: Is there any objection?

Mr. Schmitt: If your Honor please, the same objection that he made. I would like him to read into the record what he wants done.

I am just following his procedure.

Mr. Diamond: I will be very glad to.

The Court: It will probably save encumbering the record with those voluminous reports, if that is done.

Mr. Schmitt: And I would not want the confidential return of a company not involved in this proceeding to be made part of a public record.

Mr. Tannenbaum: If your Honor please, this [167] is a publicly held corporation.

Mr. Diamond: Line 9, page 1 of the return, entitled "Dividends on stock of domestic corporations," reflects the amount of \$146,327.17.

Schedule L-1 of the aforesaid return entitled "Art Cinema Corporation analysis of adjusted surplus year ended June 30, 1931," shows, under the heading of "Additions to surplus," the following:

"Dividends deductible under Section 23SP  
(of the Revenue Act of 1928) \$146,327.17."

Schedule H of the aforesaid return of Art Cinema Corporation and subsidiary companies shows the following, under the title of "Dividends deductible."

"1. Name of corporation United Artists Studio Corporation \$136,327.17."

Below that:

"United Artists Corporation \$10,000," making a total of dividends deductible in this schedule of \$146,327.17.

Mr. Schmitt: I would like for you to read into the record—you have read in under No. 9, dividend on stock of domestic corporations \$146,327.17.

I wish you would read under "Deductions," on the same page, under item 19, "Dividends from Schedule H."

Mr. Diamond: Surely. [168]

The same return, your Honor, namely, the return of Art Cinema Corporation and subsidiary companies for the fiscal year ended June 30, 1931, shows, under line 19, under the title of "Deductions," the sum of \$146,327.17 as a deduction on account of dividends.

Mr. Schmitt: Being a corporation, that washes it out.

Mr. Diamond: Yes.

The Court: Is that all?

I believe the motion with reference to briefs was taken care of the other day.

Mr. Diamond: Yes, sir.

Mr. Schmitt: Yes, sir.

Case closed.

[Endorsed]: T.C.U.S. Filed Nov. 25, 1946. [169]



[Title of Tax Court and Cause.]

### STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, that the following facts shall be taken as true, provided however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be true:

1. The petitioner is an individual residing at No. 1200 Laurel Drive, Beverly Hills, California. His income tax returns for the calendar years 1942 and 1943 were filed with the Collector of Internal Revenue for the Sixth District of California.

2. Samuel Goldwyn Studios (formerly known as United Artists Studio Corporation) was a corporation organized under the Laws of the State of California. [170]

3. Samuel Goldwyn Studios maintained its accounts and filed its income tax returns on an accrual basis for a fiscal year ending June 30th.

4. At a special meeting of the Board of Directors of Samuel Goldwyn Studios on November 30, 1942, resolutions were duly adopted to reduce the par value of the capital stock of the Corporation from \$50. to \$10. per share, and to reduce the stated capital of the Corporation. These reductions produced a reduction surplus account of \$870,390.00. Attached hereto and made a part hereof as Joint

Exhibit 1-A is a true and correct copy of these resolutions.

5. On December 14, 1942, petitioner became the owner of all the outstanding Capital Stock of Samuel Goldwyn Studios, and was the owner of said stock on December 31, 1942.

6. On December 31, 1942, pursuant to the resolutions referred to in Paragraph 4, Samuel Goldwyn Studios distributed to the petitioner the sum of \$800,000.00.

7. On June 30, 1930, the earnings and profits of Samuel Goldwyn Studios accumulated since February 28, 1913, including the earnings and profits of \$181,521.28 for the year ended June 30, 1930, were \$286,399.42. [171]

8. On September 11, 1930, the Board of Directors of Samuel Goldwyn Studios adopted the following resolution:

“Resolved that a cash dividend of Twenty One Dollars (\$21.00) per share be, and the same hereby is, declared to all shareholders of this corporation of record as of September 10, 1930, and that said dividend be paid on December 15, 1930.

“Resolved Further that the treasurer of this corporation be, and he hereby is, authorized and instructed to give notice of such dividend and to pay the same when due.”

A true and correct copy of the minutes of said Board of Directors meeting on September 11, 1930

at which said resolution was adopted is attached hereto, made part hereof and marked Joint Exhibit 2-B.

9. On September 17, 1930 the action taken by the aforesaid resolution of September 11, 1930 was reflected by entries on the books of Samuel Goldwyn Studios, photostatic copies of which entries are attached hereto and made a part hereof as Joint Exhibit 3-C. The persons named in such entries are the then stockholders of the corporation and the amounts appearing in such entries are proportionate to the stockholdings of such stockholders.

10. Samuel Goldwyn Studios sustained a statutory net loss of \$97,650.97 in the fiscal year ended June 30, 1931. [172]

11. Samuel Goldwyn Studios sustained a statutory net loss of \$28,475.54 in the fiscal year ended June 30, 1932.

12. Samuel Goldwyn Studios sustained a statutory net loss of \$101,349.36 in the fiscal year ended June 30, 1933.

13. If the accumulated earnings and profits of Samuel Goldwyn Studios were reduced in the fiscal year ended June 30, 1931, by the sum of \$203,091.00 then, of the \$800,000.00 distributed to the petitioner by Samuel Goldwyn Studios on December 31, 1942, \$104,610.56 constituted a distribution of accumulated earnings and profits.

14. If the accumulated earnings and profits and paid-in capital of Samuel Goldwyn Studios were



reduced in the fiscal year ended June 30, 1933 by the said sum of \$203,091.00, then, of the \$800,000.00 distributed to the petitioner by Samuel Goldwyn Studios on December 31, 1942, \$239,059.58 constituted a distribution of accumulated earnings and profits.

/s/ FERDINAND TANNENBAUM,  
Counsel for Petitioner.

J. P. WENCHEL,  
Chief Counsel, Bureau of  
Internal Revenue. [173]

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#### JOINT EXHIBIT 1-A

Now, Therefore, Be It Resolved, that the stated capital of this corporation be and it hereby is reduced from four hundred eighty-three thousand five hundred fifty dollars (\$483,550.00) to ninety-six thousand seven hundred ten dollars (\$96,710.00), the amount of such reduction being three hundred eighty-six thousand eight hundred forty dollars (\$386,840.00);

Resolved Further, that said outstanding par value shares of this corporation of the par value of fifty dollars (\$50.00) each be adjusted to the stated capital of this corporation as reduced by causing each shareholder of this corporation to surrender all of his certificates for outstanding shares and to receive in lieu thereof a certificate for one share of this corporation of the par value of ten dollars (\$10.00) each in lieu of each out-

## JOINT EXHIBIT 1-A—(Continued)

standing share of the par value of fifty dollars (\$50.00) each now held by him.

Resolved further, that the officers of this corporation be and they hereby are authorized and directed to procure the approval of this resolution by the vote or written consent of the holders of at least a majority of outstanding shares, regardless of limitations or restrictions on voting rights, and to take such further action as may be necessary or proper to effect the reduction of stated capital hereinbefore in this resolution provided for in accordance with the laws of the State of California.

Resolved Further, that the president or vice president and the secretary of this corporation be and they are hereby authorized, empowered and directed to file with the Division of Corporations of the State of California all applications and to take any and all other steps necessary or proper in their judgment to obtain from said Division of Corporations a permit authorizing this corporation to change the recitals on certificates representing outstanding shares of this corporation to conform to the aforesaid amendment of the articles of incorporation or to exchange new certificates containing recitals conforming to such amendment for outstanding certificates.

Resolved Further, that the following be and it hereby is adopted as the form of stock certificate to be issued hereafter by this corporation. [174]

Resolved Further, that the officers of this cor-

## JOINT EXHIBIT 1-A—(Continued)

poration are hereby directed to transfer the surplus resulting from the reduction of the stated capital of this corporation hereinabove effected to a reduction surplus account.

The following resolution was duly and regularly adopted by the affirmative vote of all of the directors present:

Whereas, proceedings have been taken in accordance with the laws of the State of California to reduce the amount of stated capital of this corporation from four hundred eighty-three thousand five hundred fifty dollars (\$483,550.00) to ninety-six thousand seven hundred ten dollars (\$96,710.00) and this reduction, together with a reduction of stated capital of this corporation heretofore made will result in a reduction surplus account amounting to eight hundred seventy thousand three hundred ninety dollars (\$870,390.00); and

Whereas, it is deemed to be to the best interests of this corporation to withdraw and distribute such reduction surplus or some portion thereof pro rata in cash or in property to the shareholders of this corporation;

Now, Therefore, Be It Resolved, that there be withdrawn and distributed out of said reduction surplus to the shareholders of this corporation, in cash and in property or in either, assets of this corporation in the amount of eight hundred thousand dollars (\$800,000.00) or in such lesser amount



## JOINT EXHIBIT 1-A—(Continued)

as the board of directors may order at any time hereafter before such distribution is made.

Be It Further Resolved that the board of directors of this corporation hereby determines that by the proposed withdrawal and distribution of such reduction surplus up to but not exceeding eight hundred thousand dollars (\$800,000.00), this corporation will not be rendered unable to satisfy its debts and liabilities when they fall due and that the assets of this corporation after such withdrawal and distribution taken at their fair present value will at least equal one and one-quarter times its debts and liabilities. [175]

Be It Further Resolved, that the president or vice president and the treasurer of this corporation be and they hereby are authorized and directed to file with the Secretary of the State of the State of California at least fourteen days before any such withdrawal and distribution a certificate in compliance with section 348 b of the California Civil Code stating that the matters and things required by said section of such withdrawal and distribution.

Now, Therefore, Be It Resolved, that the stated capital of this corporation be and it hereby is reduced from four hundred eighty-three thousand five hundred fifty dollars (\$483,550.00) to ninety-six thousand seven hundred ten dollars (\$96,710.00), the amount of such reduction being three hundred eighty-six thousand eight hundred forty dollars (\$386,840.00). [176]

## JOINT EXHIBIT 2-B

Minutes of Special Meeting of Board of Directors  
of United Artists Studio Corporation.

The undersigned, all being directors of United Artists Studio Corporation, a California corporation, and all being present at the office and principal place of business of said corporation at 7200 Santa Monica Boulevard, in the City of Los Angeles, County of Los Angeles, State of California, on September 11, 1930, at the hour of 2:30 o'clock p.m., of said day, do hereby agree and consent that a special meeting of the board of directors of this corporation shall be held immediately at the time and place aforesaid for the purpose of considering and acting upon the proposition of declaring a cash dividend to stockholders of this corporation and for the transaction of any other business which any director may desire to bring before said meeting, hereby waiving any other or further notice of said meeting and agreeing that all of the acts and proceedings of said meeting shall be as valid as though had at a meeting otherwise regularly called and noticed.

In Witness Whereof we have signed this written consent on the record of said meeting on the date and at [177] the time above set forth.

/s/ A. M. BRENTINGER,

ABRAHAM LEHR,

MARK FEILER,

JOHN W. CONSIDINE, JR.,

ROBERT P. FAIRBANKS,

N. A. McKAY.

[178]



## JOINT EXHIBIT 2-B—(Continued)

Pursuant to the foregoing written consent signed by a majority of the directors of United Artists Studio Corporation on the record of this meeting, a special meeting of the board of directors of said corporation was held on September 11, 1930, at the hour of 2:30 o'clock p.m., of said day at the office of said corporation at 7200 Santa Monica Boulevard, in the City of Los Angeles, State of California.

The following directors, constituting a majority and a quorum, were present at and participated in said meeting: Robert P. Fairbanks, John W. Considine, Jr., A. M. Brentinger, N. A. McKay, Abraham Lehr, Mark Feiler.

The following directors were absent from said meeting: Joseph M. Schenck.

Mr. Robert Fairbanks, president of the corporation, presided over the meeting. By reason of the absence of the secretary and assistant secretary of the corporation Erwin Luttermoser acted as secretary of the meeting.

The following resolution was duly and regularly adopted by the unanimous vote of all directors present at said meeting:

“Resolved that a cash dividend of Twenty One Dollars (\$21.00) per share be, and the same hereby is, declared to all shareholders of this corporation of record as of September 10, 1930, and that said dividend be paid on December 15, 1930. [179]



JOINT EXHIBIT 2-B—(Continued)

“Resolved Further that the treasurer of this corporation be, and he hereby is, authorized and instructed to give notice of such dividend and to pay the same when due.”

The meeting then adjourned.

/s/ ROBERT FAIRBANKS,  
President.

Attest:

/s/ ERWIN LUTTERMOSER,  
Acting Secretary. [180]

## EXHIBIT 3-C

Prepared by E

Approved by AMB

United Artists Studio Corp.

## JOURNAL ENTRY

No. 57

Date: Sept. 7, 1930

Acct. No.	Description	Debit	✓	Credit	✓
109	Surplus .....	\$204,656.67	✓		
105	Dividends Payable:				
	Feature Prod. ....			136,243.17	✓
	Joseph M. Schenck .....			21.00	✓
	John W. Considine Jr. ....			21.00	✓
	A. M. Brentinger .....			21.00	✓
	Mark S. Feiler .....			21.00	✓
	Pickford Fairbanks Studios .....			3,763.83	✓
	Mary Pickford Fairbanks....			20,979.00	✓
	Douglas Fairbanks .....			20,979.00	✓
	N. A. McKay .....			21.00	✓
	Robt. P. Fairbanks .....			21.00	✓
	Samuel Goldwyn, Inc., Ltd. ....			20,979.00	✓
	Abraham Lehr .....			21.00	✓
	Samuel Goldwyn, Inc., Ltd. ....			1,565.67	✓
187	Accrued Income Taxes Payable	1,041.69	✓		
109	Surplus .....			1,041.69	✓
122	Accrued Income Taxes Payable	<del>20,341.20</del>			
103	Gales Haulah—Int. Rev. Collector			<del>20,341.20</del>	✓
	(See Vo. 6904)				

Explanation: Dividend declared to stockholders of record as of Sept. 10, 1930. Payable in cash Dec. 15, 1930—Goldwyn extra dividend of 1565.67 payable by credit memo to be applied to current indebtedness of Goldwyn. See dividend files for detail. Loss for prior year (see Return 6/30/29) not considered in original accrual—6/30/30. Income Tax 1929-1930 payable as per report on file.

[Endorsed]: T.C.U.S. Filed Nov. 4, 1946. [181]

JOINT EXHIBIT 4-D

Prepared by E

Approved by AMB

United Artists Studio Corp., Ltd.

JOURNAL ENTRY

No. 896

Date: May 27, 1933

Acct. No.	Description	Debit	✓	Credit	✓
105	Dividends Payable .....	\$ 28,000.00	✓		
	Mary Pickford Fairbanks and Douglas Fairbanks				
105	Dividends Payable .....			28,000.00	✓
	Feature Prod. Inc. Ltd.				

Explanation: To transfer to Feature Prod. Inc. Ltd. \$28,-000.00 of dividend payable to Mary Pickford Fairbanks and Douglas Fairbanks, leaving amount due last two named \$17,-763.83. This entry per instructions of A. M. Brentinger.

Note: 6/30/33—See agreement between U. A. S. Corp., Feature, Art Cinema, Pickford and Fairbanks dated 2/4/33.

[Endorsed]: T.C.U.S. Admitted in evidence Nov. 4, 1946. [182]



**JOINT EXHIBIT 5-E**

Prepared by    E

Approved by    AMB

United Artists Studio Corp., Ltd.

**JOURNAL ENTRY**

No. 897

Date: May 27, 1933

Acct. No.	Description	Debit	✓	Credit	✓
105	Dividends Payable .....	\$203,091.00	✓		
		197,672.07			
57	Accounts Receivable				
	Feature Prod. Inc. Ltd.....			164,327.17	✓
	Samuel Goldwyn Inc. Ltd...			21,000.00	✓
	Mary Pickford Fairbanks..			6,649.57	✓
	Douglas Fairbanks .....			5,695.03	✓
		5,418.93			
103	Accounts Payable				
	Mary Pickford Fairbanks..			2,232.05	✓
	Douglas Fairbanks .....			3,186.88	✓
				<hr/>	
				203,091.00	

Explanation: To charge Accounts Receivable from stockholders against adjusted dividends payable to them and to credit any excess of dividends over such receivables to Accounts Payable. This entry per instructions of A. M. Brentinger.

See letters from Abraham Lehr, Samuel Goldwyn, Inc., Ltd., and Feature Prod. Inc., Ltd., dated 6/27/33 authorizing above—in dividend file.

JOINT EXHIBIT 5-E—(Continued)

United Artists Studio Corp., Ltd.  
1041 North Formosa Avenue, Hollywood, Calif.

Invoice No. JE-897

Date: May 27, 1933

To: Feature Productions, Inc., Ltd.

Description	Total
To credit your account with amount of	
dividend due you .....	\$136,327.17
	28,000.00
	164,327.17
[Initialed]: T E      AMB	

Invoice No. JE-897

United Artists Studio Corp., Ltd.  
1041 North Formosa Avenue, Hollywood, California

Date: May 27, 1933

To: Samuel Goldwyn, Inc., Ltd.

Description	Total
To credit your account with amount of	
dividend due you .....	21,000.00
[Initialed]: T E      AMB	

[Endorsed]: T.C.U.S. Admitted in evidence Nov.  
4, 1948. [183]

## JOINT EXHIBIT 6-F

## General Ledger

## DIVIDENDS PAYABLE

Account No. 105

Date	Description	Posting Ref.	Charges	Credits	Balance
1930					
Sept. 17	Feature Prod.....	J57	.....	136,243.17	.....
	Joseph M. Schenk.....	"	.....	21.00	.....
	John W. Considine Jr.....	"	.....	21.00	.....
	A. M. Brentinger.....	"	.....	21.00	.....
	Mark S. Feiler.....	"	.....	21.00	.....
	Pickford Fairbanks Studios.....	"	.....	3,763.83	.....
	Mary Pickford Fairbanks.....	"	.....	20,979.00	.....
	Douglas Fairbanks.....	"	.....	20,979.00	.....
	N. A. McKay.....	"	.....	21.00	.....
	Robt. P. Fairbanks.....	"	.....	21.00	.....
	Samuel Goldwyn Inc., Ltd.....	"	.....	20,979.00	.....
	Abraham Lehr.....	"	.....	21.00	.....
	Samuel Goldwyn Inc., Ltd.....	"	.....	1,565.67	204,656.67
1931					
Dec. 12	As of June 27, 1931 (S. Goldwyn).....	J447	.....	1,565.67	203,091.00
1933					
May 27	Mary Pickford Fairbanks and Douglas Fairbanks.....	J896	28,000.00	.....	.....
"	Feature Productions Inc., Ltd.....	J896	.....	28,000.00	.....
		J897	203,091.00	.....	.....
July 1	Mary Pickford Fairbanks and Douglas Fairbanks.....	J926	.....	17,763.83	.....



# Joint Exhibit 6-F—(Continued)

General Ledger		DIVIDENDS PAYABLE—(Continued)		Account No. 105	
Date	Description	Posting Ref.	Charges	Credits	Balance
1936					
June 27	.....	JR773	16,924.25	.....	.....
	.....	JR718	.....	16,924.25	.....
1937					
July 3	.....	JR970	135,394.00	.....	.....
1938					
July 2	2.25 per share declared 7/28/38 paid 7/28/38	J3452	.....	135,394.00	.....
	Sam'l Goldwyn Inc., Ltd.....	JR1131	21,759.75	.....	.....
		J4244	.....	21,759.75	.....
1942					
Nov. 28	.....	JR1571	170,000.00	.....	.....
	.....	J6124	.....	170,000.00	.....
1943					
Jan. 2	.....	JR1575	816,413.49	.....	.....
	.....	J6140	.....	800,000.00	.....
	.....	J6144	.....	16,413.49	.....

*vs. Samuel Goldwyn*

PETITIONER'S EXHIBIT No. 1

Feature Productions, Inc.  
1041 North Formosa Avenue

Hollywood, Calif., June 27, 1933.

United Artists Studio Corporation, Ltd.  
1041 North Formosa Avenue  
Los Angeles, California

Gentlemen:

Under the terms of that certain agreement between United Artists Studio Corporation, Feature Productions, Inc., Art Cinema Corporation, and Mary Pickford Fairbanks and Douglas Fairbanks dated February 4, 1933, Mary Pickford Fairbanks and Douglas Fairbanks assigned to Feature Productions, Inc. \$28,000.00 of the dividend declared September 11, 1930 by the board of directors of United Artists Studio Corporation, Ltd. Instead of paying said amount to the undersigned in money, you are hereby authorized to retain said amount to apply on account of the indebtedness now owing from the undersigned to you.

Very truly yours,

FEATURE PRODUCTIONS,  
INC. LTD.

By /s/ A. M. BRENTINGER,  
Vice-President.

[Endorsed]: T.C.U.S. Admitted in evidence Nov.  
4, 1946. [187]

PETITIONER'S EXHIBIT No. 2

Feature Productions, Inc.  
1041 North Formosa Avenue

Hollywood, Calif., June 27, 1933.

United Artists Studio Corporation, Ltd.  
1041 North Formosa Avenue  
Los Angeles, California

Gentlemen:

On September 11, 1930, the board of directors of United Artists Studio Corporation, Ltd., a California corporation, declared a dividend of \$21.00 per share payable to stockholders of record on September 10, 1930. By the declaration of such dividend the undersigned is entitled to receive the sum of \$136,327.17. Instead of paying said amount to the undersigned in money, you are hereby authorized to retain said amount to apply on account of the indebtedness now owing from the undersigned to you.

Very truly yours,

FEATURE PRODUCTIONS,  
INC., LTD.

By /s/ A. M. BRENTINGER,  
Vice-President.

[Endorsed]: T.C.U.S. Admitted in evidence Nov.  
4, 1946. [188]



## PETITIONER'S EXHIBIT No. 3

Samuel Goldwyn Inc., Ltd.  
Studios - 7210 Santa Monica Boulevard  
Los Angeles, California

June 27, 1933.

United Artists Studio Corporation, Ltd.,  
1041 North Formosa,  
Los Angeles, California.

Gentlemen:

On September 11, 1930, the board of directors of United Artists Studio Corporation, Ltd., a California corporation, declared a dividend of \$21.00 per share payable to stockholders of record on September 10, 1930. By the declaration of such dividend the undersigned is entitled to receive the sum of \$20,979.00. Instead of paying said amount to the undersigned in money you are hereby authorized to retain said amount to apply on account of the indebtedness now owing from the undersigned to you.

Very truly yours,

SAMUEL GOLDWYN, INC., LTD.

By /s/ ABRAHAM LEHR,

Vice President.

[189]

[Endorsed]: T.C.U.S. Admitted in evidence Nov. 4, 1946.

PETITIONER'S EXHIBIT No. 4

Samuel Goldwyn Inc., Ltd.  
Studios - 7210 Santa Monica Boulevard  
Los Angeles, California

June 27, 1933.

United Artists Studio Corporation, Ltd.,  
1041 North Formosa,  
Los Angeles, California.

Gentlemen:

On September 11, 1930, the board of directors of United Artists Studio Corporation, Ltd., a California corporation, declared a dividend of \$21.00 per share payable to stockholders of record on September 10, 1930. By the declaration of such dividend the undersigned is entitled to receive the sum \$21.00. Instead of paying said amount to the undersigned in money, you are hereby authorized to retain said amount to apply on account of the indebtedness now owing from Samuel Goldwyn Inc.. Ltd. to you.

Very truly yours,

/s/ ABRAHAM LEHR.

[Endorsed]: T.C.U.S. Admitted in evidence Nov.  
4, 1946. [190]





# CORPORATION INCOME TAX RETURN

## For Fiscal Year 1930

Fiscal Year began July 1, 1929, and ended June 30, 1930.  
 Was This Return Not Later Than the Fifteenth Day of the Third Month Following the Close of the Fiscal Year?

THE LIBRARY DEPARTMENT  
UNIVERSITY OF MICHIGAN

**ADDITIONAL**

For Liability

303253

Page 1 of 10 pages

400018

三

**Total Disbursements in Items 12 to 23.**

Net Income (Item 11 minus Item 23)

## COMPUTATION OF TAX

Income (Item 24, above)	\$	176	000	05	\$	21	325	00
Less Credit of \$2,000 (for a domestic corporation in net income of less than \$25,500)								
Net income (Item 25, above)	\$	176	000	05	\$	21	325	00
Less 10% of Item 27	\$	19	454	80	\$	9	788	40
Net income (Item 26, above)	\$	156	545	25	\$	10	536	60
Less 10% of 1920 net income (Item 26 plus Item 27)	\$	19	454	80	\$	20	241	80
Net income (Item 24, above)	\$	176	000	05	\$	20	241	80
Less Credit of \$2,000 (for a domestic corporation in net income of less than \$25,500)								
Net income (Item 26)	\$	176	000	05	\$	20	241	80

... of day to "popcorn," popcorn of good quality.

**Checks and drafts will be accepted only if**



Page 2 of Return

## SCHEDULE K—BALANCE SHEETS (See Instruction 43)

## Respondent's Exhibit A—(Continued)

Items	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
<b>ASSETS</b>				
1. Cash.....	.....	\$ 69,832.45	.....	\$ 45,105.45
3. Accounts receivable.....	\$250,539.38	.....	\$ 80,390.94	.....
Less reserve for bad debts.....	.....	250,539.38	.....	80,390.94
4. Supplies.....	\$ 28,339.46	.....	\$ 41,932.41	.....
	.....	28,339.46	.....	41,932.41
7. Deferred charges:				
Prepaid insurance.....	\$ 8,997.87	.....	\$ 17,593.00	.....
Prepaid taxes.....	717.07	.....	349.00	.....
All other.....	2,635.56	12,350.50	5,837.44	23,779.44
8. Capital assets:				
Buildings.....	\$500,907.29	.....	\$ 880,986.17	.....
Machinery and equipment.....	303,074.78	.....	500,932.04	.....
Furniture and fixtures.....	60,461.39	.....	68,784.79	.....
Delivery equipment.....	14,754.58	.....	17,436.21	.....

vs. Samuel Goldwyn



## Respondent's Exhibit A—(Continued)

Page 2 of Return—(Cont'd)

Schedule K—Balance Sheets—(Cont'd)

Items	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
<b>ASSETS—(Cont'd)</b>				
Leasehold Improvements.....	108,221.65	.....	139,282.42	.....
Leased Equipment.....	.....	.....	335,947.30	.....
<hr/>				
Less reserves for depreciation.....	\$987,419.69	.....	\$ 1,943,368.93	.....
	344,323.91	643,095.78	689,564.93	1,253,804.00
<hr/>				
<b>11. Other assets (describe fully) :</b>				
Accrued Interest Receivable.....	\$ 1,753.89	.....	.....	.....
Deposits on Option Land Pur.....	.....	.....	\$ 43,637.51	.....
Sound Department.....	549,783.98	.....	.....	.....
Music Department.....	3,586.06	555,123.93	.....	43,637.51
<hr/>				
12. Total Assets.....	.....	\$ 1,559,281.50	.....	\$ 1,488,649.75
<b>LIABILITIES</b>				
13. Notes payable (less than one year).....	.....	\$ 240,792.28	.....	\$ 19,050.00
14. Accounts payable.....	.....	162,957.50	.....	87,513.97

## Respondent's Exhibit A—(Continued)

Page 2 of Return—(Cont'd)

Schedule K—Balance Sheets—(Cont'd)

	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
<b>LIABILITIES—(Cont'd)</b>				
17. Accrued expenses:				
Interest.....	\$ 4,754.16	.....	\$ 39.00	.....
Taxes.....			20,341.20	.....
All other.....	13,441.13	18,195.29	17,870.75	38,250.95
18. Other liabilities (describe fully):				
Refunds Due Producers.....	\$132,100.17	.....	\$ 148,001.55	.....
Capital Stock Subscriptions.....	39,900.00	.....	59,900.00	.....
Deferred Income.....	.....	.....	5,000.00	.....
Unclaimed Salaries and Wages.....	105.49	172,105.66	105.49	213,007.04
19. Capital stock:				
Common stock (less stock in treasury) .....	.....	867,200.00	.....	867,200.00
20. Surplus.....	\$ 98,030.77	.....	\$ 98,030.77	.....
21. Undivided profits.....	.....	98,030.77	165,597.02	263,627.79
22. Total Liabilities.....	.....	\$ 1,559,281.50	.....	\$ 1,488,649.75

vs. Samuel Goldwyn

## Respondent's Exhibit A—(Continued)

## Page 3 of Return

SCHEDULE L—Reconciliation of Net Income and Analysis  
of Changes in Surplus

1. Net income from Item 24, page 1 of the return.....	\$176,880.03
* * * *	
5. Total of Lines 1 to 4, inclusive.....	\$176,880.03
6. Total from Line 14.....	20,341.20
7. Net profit for year, as shown by books, before any adjustments are made therein (Line 5 minus Line 6) .....	\$156,538.83
8. Surplus and undivided profits as shown by bal- ance sheet at close of preceding taxable year....	98,030.77
9. Other credits to surplus (to be detailed):	
(a) Net Loss for Prior Year.....	9,058.19
10. Total of Lines 7 to 9, inclusive.....	\$263,627.79
* * * *	
12. Surplus and undivided profits as shown by bal- ance sheet at close of taxable year (Line 10 minus Line 11) .....	\$263,627.79
13. Unallowable deductions:	
(b) Income and profits taxes paid to the United States, and so much of such taxes paid to its possessions or foreign countries as are claim- ed as a credit in Item 41, page 1 of the return	20,341.20
14. Total of Line 13.....	\$ 20,341.20
* * * *	

## QUESTIONS

## KIND OF BUSINESS

1. By means of the key letters given below, identify the corporation's main income-producing activity with one of the general classes, and follow this by a special description of the business sufficient to give the information called for under each general class.

\* \* \* \* E4.—Leasing transportation or utilities. State kind of property. \* \* \* \*



### Respondent's Exhibit A—(Continued)

3. Answers: (a) General class (use key letter designation) E-4. (b) Main income-producing business (give specifically the information called for under each key letter, also whether acting as principal, or as agent on commission; state if inactive or in liquidation) : Leasing Space and Facilities for Production of Motion Pictures.

### AFFILIATIONS WITH OTHER CORPORATIONS

See Instruction 38

4. Is this a consolidated return of two or more corporations?  
No.

5. Did the corporation file a consolidated return for the preceding taxable year? No.

### PREDECESSOR BUSINESS

6. Did the corporation file a return under the same name for the preceding taxable year? Yes. Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? Yes. If answer is "yes," give name and address of each predecessor business, and the date of the change in entity: Pickford-Fairbanks Studios Company, November 22, 1926.

### BASIS OF RETURN

7. Is this return made on the basis of actual receipts and disbursements? Yes.

### VALUATION OF INVENTORIES

8. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock: Inventories Valued at Cost. Taken June 30, 1930.

### LIST OF ATTACHED SCHEDULES

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return:

Schedule of Cost of Goods Sold

Schedule of Cost of Manufacturing

Schedule of Profit from Sale of Capital Assets

## Respondent's Exhibit A—(Continued)

Schedule of Other Deductions

Schedule of Compensation of Officers

Schedule of Repairs

Schedule of Taxes

Schedule of Bad Debts

Schedule of Depreciation

The corporation's books are in care of Erwin Luttermoser. Located at 1041 No. Formosa Ave., Hollywood, Calif.

Page 4 of Return

## AFFIDAVIT

We, the undersigned, vice-president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

(Corporate Seal)

/s/ A. M. BRENTINGER,  
Vice-President.

/s/ [Illegible]  
Asst. Treasurer.

Sworn to and subscribed before me this 12th day of September, 1930.

(Seal) /s/ ERWIN LUTTERMOSER,  
Notary Public in and for the City and County of Los Angeles,  
State of California.

My Commission Expires Dec. 19, 1931.

[Endorsed]: T.C.U.S. Admitted in evidence Nov.  
4, 1946. [194]













## Respondent's Exhibit B—(Cont'd)

Page 2 of Return

## SCHEDULE K—BALANCE SHEETS (See instruction 43)

## Items

Beginning of Taxable Year

End of Taxable Year

## ASSETS

Amount

Total

Amount

Total

## 1. Cash.....

\$

45,105.45

\$

\$

88,589.72

## 3. Accounts receivable.....

\$

80,390.94

80,390.94

\$

146,598.91

146,549.41

Less reserve for bad debts.....

80,390.94

## 4. Inventories:

Raw materials.....

\$

39,762.75

\$

50,441.51

Work in process.....

1,928.17

2,255.10

Supplies.....

2,169.66

5,284.62

43,860.58

57,981.23

## 7. Deferred charges:

Prepaid insurance.....

\$

17,593.00

\$

21,703.31

Prepaid taxes.....

349.00

342.00

All other.....

3,909.27

21,851.27

610.77\*

21,434.54

## Respondent's Exhibit B—(Cont'd)

Schedule K—Balance Sheets—(Cont'd)

Page 2 of Return—(Cont'd)

Items	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
<b>ASSETS—(Cont'd)</b>				
8. Capital assets:				
Land (Leased).....	.....	.....	.....	.....
Buildings and Leasehold Improvements...\$	1,020,268.59	.....	\$ 1,051,638.22	.....
Machinery and equipment.....	817,446.43	.....	929,682.84	.....
Furniture and fixtures.....	68,784.79	.....	72,916.80	.....
Delivery equipment.....	36,869.09	.....	37,892.09	.....
	\$ 1,943,368.90	.....	\$ 2,092,129.95	.....
Less reserves for depreciation.....	689,564.90	1,253,804.00	992,902.03	1,099,227.92
11. Other assets (describe fully):				
Deposit to be applied on purchase of land				
if option to purchase is exercised.....\$	43,637.51	43,637.51	\$ 43,718.74	43,718.74
12. Total Assets.....	.....	\$ 1,488,649.75	.....	\$ 1,457,501.56
<b>LIABILITIES</b>				
13. Notes payable (less than one year).....	.....	\$ 19,050.00	.....	\$ 15,000.00
14. Accounts payable.....	.....	95,135.00	.....	183,628.07

## LIABILITIES—(Cont'd)

## 17. Accrued expenses:

Interest.....	\$ 39.00	.....
Taxes.....	20,341.20	.....
All other.....	1,176.11	21,556.31

## 18. Other liabilities (describe fully):

Dividends Payable.....	.....	.....
Contracts Payable.....	\$ 9,179.10	.....
Refunds Due Tenants.....	148,001.55	.....
Deferred Income (Music Dept.).....	5,000.00	162,180.65

## 19. Capital stock:

Common stock (less stock in treasury).....	\$ 927,100.00	927,100.00
--	---------------	------------

## 20. Surplus.....

\$ 263,627.79

## 21. Undivided profits.....

.....

## 22. Total Liabilities.....

\$ 1,488,649.75

\* This item includes suspense accounts 4,398.57. Pending adjustment on completion of this year's program of motion pictures lessees on premises have been overcharged for services in this amount. Sales were correspondingly credited.

vs. Samuel Goldwyn

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End of Taxable Year

Total

Amount

Total

Amount

\$

19.74

.....

2,836.75

\$

204,656.67

.....

.....

123,058.92

.....

327,715.59

\$

967,100.00

967,100.00

\$

58,971.12

.....

97,700.47

38,729.35

\$ 1,457,501.56



## Respondent's Exhibit B—(Cont'd)

## Page 3 of Return

SCHEDULE L—Reconciliation of Net Income and Analysis  
of Changes in Surplus

1. Net income from Item 24, page 1 of the return....	\$ 97,650.97
* * * *	
5. Total of Lines 1 to 4, inclusive.....	\$ 97,650.97
6. Total from Line 14 .....	\$ 49.50
7. Net profit for year, as shown by books, before any adjustments are made therein (Line 5 minus Line 6) .....	\$ 97,700.47
8. Surplus and undivided profits as shown by bal- ance sheet at close of preceding taxable year....	263,627.79
* * * *	
10. Total of Lines 7 to 9, inclusive.....	\$165,927.32
11. Total from Line 17.....	204,656.67
12. Surplus and undivided profits as shown by bal- ance sheet at close of taxable year (Line 10 minus Line 11) .....	\$ 38,729.35
13. Unallowable deductions:	
(b) Income and profits taxes paid to the United States, and so much of such taxes paid to its possessions or foreign countries as are claim- ed as a credit in Item 32, page 1 of the return	49.50
14. Total of Line 13.....	\$ 49.50
* * * *	
16. Other debits to surplus (to be detailed) :	
(a) Dividends declared 9/10/30 but unpaid on 6/30/31 .....	\$204,656.67
17. Total of Lines 15 and 16.....	\$204,656.67

## QUESTIONS

## KIND OF BUSINESS

1. By means of the key letters given below, identify the corporation's main income producing activity with one of the general classes, and follow this by a special description of the business sufficient to give the information called for under each general class.

Respondent's Exhibit B—(Cont'd)

\* \* \* \* D—Construction—excavations, buildings, bridges, railroads, ships, etc., also equipping and installing same with systems, devices, or machinery, without their manufacture. State nature of structures built, materials used, or kind of installations.

\* \* \* \* G—Service—domestic, including hotels, restaurants, etc.; amusements; other professional, personal, or technical service. State the service. \* \* \*

3. Answers: (a) General class (use key letter designation) D & G. (D) Construction of motion picture sets, props, wardrobe—of common building materials; (G) Providing services as designers and active operators of motion picture sets and equipment.

AFFILIATIONS WITH OTHER CORPORATIONS

See Instruction 38

4. Is this a consolidated return of two or more corporations? No.

5. Did the corporation file a consolidated return for the preceding taxable year? No.

PREDECESSOR BUSINESS

6. Did the corporation file a return under the same name for the preceding taxable year? No. Was the corporation in any way an outgrowth, result, continuance, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? Yes. If answer is "yes," give name and address of each predecessor business, and the date of the change in entity: The corporation changed its name from United Artists Studio Corporation to United Artists Studio Corporation, Ltd. within the taxable year.

BASIS OF RETURN

7. Is this return made on the basis of actual receipts and disbursements? Yes.

VALUATION OF INVENTORIES

8. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock: Cost or market, whichever is lower.

## Respondent's Exhibit B—(Cont'd)

## LIST OF ATTACHED SCHEDULES

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

Schedule "I" "Depreciation"

Schedule "X" "General Expense"

Schedule "G" "Bad Debts"

The corporation's books are in care of L. B. Smith, Auditor. Located at 1041 No. Formosa Ave., Los Angeles, Calif.

Page 4 of Return

SCHEDULE A—Cost of Manufacturing or Producing Goods  
(See Instruction 2)

Items	Amount (Enter as Item 2c)
Cost of Salaries and Wages Sold.....	\$641,690.45
Wages and Material:	
Wardrobe Manufacture .....	26,384.81
Photographic Depts. ....	47,861.85
Transportation Dept. ....	18,359.35
Dining Room .....	9,137.53
Wages, demolishing unused mot. pic. sets.....	1,461.23
* * * *	<hr/>
	\$744,895.22

SCHEDULE C—Compensation of Officers (See Instruction 12)

1. Name of Officer: A. M. Brentinger. 2. Official Title: Vice Pres.  
3. Time Devoted to Business:  $\frac{3}{4}$ . 4. Shares of Stock Owned: 1  
Common. 5. Preferred: None. 6. Amount of Compensation (enter as Item 12): \$15,600.00.

SCHEDULE D—Cost of Repairs and Maintenance

1. Items	2. Amount (Enter as Item 14)
Buildings and Grounds .....	\$ 25,214.30
Rental Equipment (Lights, Cameras, etc.).....	22,381.80
Machinery, Tools, Projection Equipment.....	7,140.49
Furniture and Fixtures .....	6,599.54
Recording Equipment .....	13,094.47
Autos and Miscellaneous .....	7,769.19



Respondent's Exhibit B—(Cont'd)

SCHEDULE E—Taxes Paid (See Instruction 16)

1. Items	2. Amount (Enter as Item 16)
State Franchise Tax Bill 27970.....	\$ 1,854.96
City & County Tax Bill 767502½.....	1,216.80
do 861096.....	40.83
do 354121.....	5,926.33
do 767500.....	17,597.26
do 555182.....	4,285.64
City License .....	400.00
Auto Licenses .....	292.00

\* \* \* \*

AFFIDAVIT

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally, duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

(Corporate Seal) /s/ R. FAIRBANKS,  
President.

/s/ A. M. BRENTINGER,  
Treasurer.

Sworn to and subscribed before me this 12th day of October, 1931.

(Seal) /s/ W. SMITH,  
Notary Public in and for the City and County of Los Angeles,  
California.

[Endorsed]: T.C.U.S. Admitted in evidence Nov. 4, 1946. [198]

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
JANUARY 1951

TO THE HONORABLE CHAIRMAN OF THE BOARD OF TRUSTEES  
OF THE UNIVERSITY OF CHICAGO  
FROM THE DEPARTMENT OF CHEMISTRY  
SUBJECT: REPORT ON THE PROGRESS OF RESEARCH  
DURING THE YEAR 1950

The following is a summary of the work done in the Department of Chemistry during the year 1950. The work was carried out under the direction of the Department Head, Professor [Name], and the assistance of the following staff: [List of staff members].

The work was carried out in the following areas:

- 1. [Area 1]
- 2. [Area 2]
- 3. [Area 3]
- 4. [Area 4]
- 5. [Area 5]

The results of the work are summarized in the following table:

Area	Project	Progress
1. [Area 1]	[Project 1.1]	[Progress 1.1]
	[Project 1.2]	[Progress 1.2]
2. [Area 2]	[Project 2.1]	[Progress 2.1]
	[Project 2.2]	[Progress 2.2]
3. [Area 3]	[Project 3.1]	[Progress 3.1]
	[Project 3.2]	[Progress 3.2]
4. [Area 4]	[Project 4.1]	[Progress 4.1]
	[Project 4.2]	[Progress 4.2]
5. [Area 5]	[Project 5.1]	[Progress 5.1]
	[Project 5.2]	[Progress 5.2]

The work was carried out in accordance with the plan of work approved by the Board of Trustees for the year 1950. The results of the work are summarized in the following table:

Area	Project	Progress
1. [Area 1]	[Project 1.1]	[Progress 1.1]
	[Project 1.2]	[Progress 1.2]
2. [Area 2]	[Project 2.1]	[Progress 2.1]
	[Project 2.2]	[Progress 2.2]
3. [Area 3]	[Project 3.1]	[Progress 3.1]
	[Project 3.2]	[Progress 3.2]
4. [Area 4]	[Project 4.1]	[Progress 4.1]
	[Project 4.2]	[Progress 4.2]
5. [Area 5]	[Project 5.1]	[Progress 5.1]
	[Project 5.2]	[Progress 5.2]

The work was carried out in accordance with the plan of work approved by the Board of Trustees for the year 1950. The results of the work are summarized in the following table:

Area	Project	Progress
1. [Area 1]	[Project 1.1]	[Progress 1.1]
	[Project 1.2]	[Progress 1.2]
2. [Area 2]	[Project 2.1]	[Progress 2.1]
	[Project 2.2]	[Progress 2.2]
3. [Area 3]	[Project 3.1]	[Progress 3.1]
	[Project 3.2]	[Progress 3.2]
4. [Area 4]	[Project 4.1]	[Progress 4.1]
	[Project 4.2]	[Progress 4.2]
5. [Area 5]	[Project 5.1]	[Progress 5.1]
	[Project 5.2]	[Progress 5.2]

# CORPORATION INCOME TAX RETURN For Fiscal Year 1932

Fiscal Year begins JULY 1, 1932, and ended June 30, 1933  
File This Return Not Later Than the Fourth Day of the Third Month Following the Close of the Fiscal Year

PRINT PLAINLY IN INK—GIVE NAMES AND RESIDENCE ADDRESS

UNITED ARTISTS STUDIO CORPORATION, INC.

1041 North Normandie Avenue

Los Angeles, California

Date of Incorporation November 12, 1931

MADE IN U.S.A.  
1932  
133  
1933

Under the Laws of said State or Country California

Kind of Business Motion Picture Rental Studio In This a Combined Return of Two or More Corporations Not

## GROSS INCOME

1. Gross Sales from Trading \$905,568.02 Less Returns and Refunds 0

2. Less Cost of Goods Sold:

(a) Inventory at beginning of year \$0

(b) Merchandise bought for sale 135,733.33

(c) Cost of manufacturing or producing goods from business at 69,659.86

(d) Total of items (a), (b), and (c) 195,393.19

(e) Less Inventory at end of year 0

3. Gross Profit from Trading or Manufacturing (Item 1 minus Item 2) \$709,174.83

4. Gross Profit from Operations Other Than Trading or Manufacturing 0

5. Charges for studio facilities based on sound recording time \$61,428.80

6. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds 0

7. Royalties 0

8. Dividends on Stock of Domestic Corporations 0

9. Other Income (including dividends received on stock of foreign corporations). State nature of income 0

10. Discounts on purchases 0

11. Return of portion of premium paid on Western's Corporation Policy in prior year 0

Total Income as Items 1 to 10 \$770,603.63

12. Compensation of Officers \$18,800.00

13. Rent on Business Property 64,244.12

14. Repairs (Item 12 plus 13) \$83,044.12

15. Interest 0

16. Taxes (Item 12 plus 13) \$18,800.00

17. Less Item 12 plus 13 \$83,044.12

18. Dividends (Item 12 plus 13) 0

19. Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (Item 12 plus 13) \$18,800.00

20. Repairs of Motors, Oil and Gas Wells, Tunnels, etc. (Excluded amounts on Item 12) 0

21. Other Deductions Not Specified Above. (Explain nature of each deduction.) 0

(a) Salaries and wages (Total included in Item 12 is \$11,000) 144,428.81

(b) Not Less for 1932-1931 (Explain deduction) 0

(c) Operating Expenses (Explainable) \$3,254.30

(d) 0

(e) 0

Total Deductions as Items 12 to 22 \$165,527.23

Net Income (Item 11 minus Item 23) \$605,076.40

24. Net Income (Item 24 above) \$605,076.40

25. Federal Income Tax (15% of Item 24) \$90,761.46

26. State Income Tax (10% of Item 24) \$60,507.64

27. Balance (Item 24 minus Item 25) \$514,314.94

28. Less: Income Tax Paid at Source. (This credit can only be allowed to a nonresident foreign corporation) 0

29. Income Tax Paid to a Foreign Country or U. S. possession by a domestic corporation (see Item 27) 0

30. Balance of Tax (Item 28 minus Items 28 and 29) \$514,314.94

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if

## COMPUTATION OF TAX

25. Net Income (Item 24 above) \$605,076.40

26. Federal Income Tax (15% of Item 25) \$90,761.46

27. State Income Tax (10% of Item 25) \$60,507.64

28. Balance (Item 25 minus Item 26 and 27) \$514,314.94

29. Less: Income Tax Paid at Source. (This credit can only be allowed to a nonresident foreign corporation) 0

30. Income Tax Paid to a Foreign Country or U. S. possession by a domestic corporation (see Item 27) 0

31. Balance of Tax (Item 28 minus Items 29 and 30) \$514,314.94





## Respondent's Exhibit C—(Cont'd)

Page 2 of Return

## SCHEDULE K—BALANCE SHEETS (See Instruction 43)

Items	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
<b>ASSETS</b>				
1. Cash.....	.....	\$ 88,589.72	.....	\$ 33,200.29
2. Notes receivable.....	.....	.....	.....	200.00
3. Accounts receivable.....	\$ 146,598.91	.....	\$ 178,796.59	.....
Less reserve for bad debts.....	.....	146,598.91	.....	178,796.59
4. Inventories:	\$ 50,441.51	.....	.....	.....
Raw materials.....	2,255.10	.....	\$ 81.18	.....
Work in progress.....	5,284.62	.....	47,831.70	.....
Supplies.....	.....	57,981.23	.....	47,912.88
7. Deferred charges:				
Prepaid insurance.....	\$ 21,703.31	.....	\$ 21,109.04	.....
Prepaid taxes.....	342.00	.....	304.50	.....
All other.....	610.77	21,434.54	27,930.09	49,343.63

Respondent's Exhibit C—(Cont'd)

Schedule K—Balance Sheets—(Cont'd)

Page 2 of Return—(Cont'd)

Items	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
ASSETS—(Cont'd)				
8. Capital assets:				
Land (Leased)				
Buildings and Leasehold Improvements.....	\$ 1,051,638.22	.....	\$ 1,057,989.67	.....
Machinery and equipment.....	929,682.84	.....	976,937.42	.....
Furniture and fixtures.....	72,916.80	.....	73,182.45	.....
Delivery equipment.....	37,892.09	.....	21,529.98	.....
	\$ 2,092,129.95	.....	\$ 2,129,639.52	.....
Less reserves for depreciation.....	992,902.03	1,099,227.92	1,266,858.54	862,780.98
11. Other assets (describe fully):				
Deposit to be applied on purchase of land if option to purchase is exercised.....	\$ 43,718.74	43,718.74	\$ 43,718.74	43,718.74
12. Total Assets.....		\$ 1,457,551.06		\$ 1,215,953.11



# Respondent's Exhibit C—(Cont'd)

Schedule K—Balance Sheets—(Cont'd)

Page 2 of Return—(Cont'd)

Beginning of Taxable Year	
	Total
Amount	
LIABILITIES	
13. Notes payable (less than one year).....	
14. Accounts payable.....	\$ 15,000.00
17. Accrued expenses:	183,628.07
Interest.....	19.74
All other.....	2,817.01
18. Other liabilities (describe fully):	
Dividends Payable.....	\$ 204,656.67
Refunds due tenants.....	123,058.92
19. Capital stock:	
Common stock (less stock in treasury).....	\$ 967,100.00
20. Surplus.....	\$ 58,971.12
21. Undivided profits.....	97,700.47
22. Total Liabilities.....	\$ 1,457,551.06

vs. Samuel Goldwyn

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## Respondent's Exhibit C—(Cont'd)

## Page 3 of Return

SCHEDULE L—Reconciliation of Net Income and Analysis  
of Changes in Surplus

1.	Net income from Item 24, page 1 of the return....	\$ 28,475.54
2.	Nontaxable income:	
	(f) Other items of nontaxable income( to be detailed) :	
	(1) Profit from exchange of assets in kind	
	(2) Mimeograph .....	30.00
	(3) Check Protector .....	45.00
* * * *		
5.	Total of Lines 1 to 4, inclusive.....	\$ 28,400.54
6.	Total from Line 14.....	3,032.53
<hr/>		
7.	Net profit for year, as shown by books, before any adjustments are made therein (Line 5 minus Line 6) .....	\$ 31,433.07
8.	Surplus and undivided profits as shown by bal- ance sheet at close of preceding taxable year....	38,729.35
9.	Other credits to surplus (to be detailed) :	
	(a) Cancellation of portion of dividend declared	1,565.67
<hr/>		
10.	Total of Lines 7 to 9, inclusive.....	\$ 68,596.75
* * * *		
12.	Surplus and undivided profits as shown by bal- ance sheet at close of taxable year (Line 10 minus Line 11) .....	\$ 68,596.75
13.	Unallowable deductions:	
	(b) Income and profits taxes paid to the United States, and so much of such taxes paid to its possessions or foreign countries as are claim- ed as a credit in Item 32, page 1 of the return	3,032.53
<hr/>		
14.	Total of Line 13.....	\$ 3,032.53

## QUESTIONS

## KIND OF BUSINESS

1. By means of the key letters given below, identify the corporation's main income-producing activity with one of the general classes, and follow this by a special description of the busi-

## Respondent's Exhibit C—(Cont'd)

ness sufficient to give the information called for under each general class.

\* \* \* I.—Concerns not falling in above classes (a) because of combining several of them with no predominant business, or (b) for other reasons. \* \* \*

3. Answers: (a) General class (use key letter designation): "I": Designing and constructing motion picture sets of common building materials. Providing labor, space, services, facilities and equipment for production of motion pictures.

## AFFILIATIONS WITH OTHER CORPORATIONS

(See Instructon 38)

4. Is this a consolidated return of two or more corporations? No.

5. Did the corporation file a consolidated return for the preceding taxable year? No.

## PREDECESSOR BUSINESS

6. Did the corporation file a return under the same name for the preceding taxable year? Yes. Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? Yes. If answer is "yes," give name and address of each predecessor business, and the date of the change in entity: Pickford-Fairbanks Studios Company, November 22, 1926. United Artists Studio Corp., February 16, 1931.

## BASIS OF RETURN

7. Is this return made on the basis of actual receipts and disbursements? Yes.

## VALUATION OF INVENTORIES

8. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock: Cost or market, whichever is lower.

## LIST OF ATTACHED SCHEDULES

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The



## Respondent's Exhibit C—(Cont'd)

name and address of the corporation should be placed on each separate schedule accompanying the return.

Schedule "A"—Cost of Manufacturing or Producing Goods

Schedule "D"—Repairs and Maintenance

Schedule "G"—Bad Debts

Schedule "I"—Depreciation

Schedule "X"—Operating Expenses

The corporation's books are in care of M. A. Ezzell, Auditor. Located at 1041 No. Formosa Avenue, Los Angeles, California.

## Page 4 of Return

SCHEDULE A—Cost of Manufacturing or Producing Goods  
(See Instruction 2)

See separate schedule

SCHEDULE B—Profit from Sale of Real Estate, Stocks,  
Bonds, Etc. (See Instruction 8)

1. Kind of Property	2. Date Acquired	3. Amount Realized
Framed Picture .....	1931	\$15.00
Camera Motor Case.....	1927	10.00

## Schedule B—(Continued)

4. Depreciation Allowable Since Acquisition	5. Cost or Value as of Mar. 1, 1913, Whichever Greater	7. Net Profit (Enter as Item 8)
\$ 3.50	\$35.00	\$16.50
15.00	15.00	10.00
		6.50

SCHEDULE C—Compensation of Officers (See Instruction 12)

1. Name of Officer: A. M. Brentinger. 2. Official Title: Vice President. 3. Time Devoted to Business:  $\frac{3}{4}$ . 6. Amount of Compensation (Enter as Item 12): \$15,900.00.

SCHEDULE D—Cost of Repairs (See Instruction 14)

See separate schedule

Respondent's Exhibit C—(Cont'd)

SCHEDULE E—Taxes Paid (See Instruction 16)

1. Items	2. Amount (Enter as Item 16)
Los Angeles—City and County.....	\$ 28,207.58
State of California—Franchise .....	25.00
State of California—Auto Licenses.....	246.50
Federal Bank Check Tax.....	10.44
	<hr/>
	\$28,489.52

\* \* \* \*

SCHEDULE G—Bad Debts (See Instruction 18)

See separate schedule

\* \* \* \*

SCHEDULE I—Explanation of Deduction for Depreciation  
(See Instruction 20)

See separate schedule

AFFIDAVIT

I, the undersigned, treasurer of the corporation for which this return is made, being duly sworn, depose and say that this return, including the accompanying schedules and statements, has been examined by me and is, to the best of my knowledge and belief, a true and complete return made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1928 of 1928 and the Regulations issued thereunder.

(Corporate Seal)

/s/ A. M. BRENTINGER,  
For President.  
/s/ A. M. BRENTINGER,  
Treasurer.

Sworn to and subscribed before me this 13th day of September, 1932.

(Seal) /s/ A. R. [Illegible]  
(Signature of Officer administering oath)

The President of the corporation being absent from the city, Mr. A. M. Brentinger, who is Vice-President and Treasurer, has signed as Treasurer and also for the President.

[Endorsed]: T.C.U.S. Admitted in evidence Nov. 4, 1946. [202]









## Respondent's Exhibit D—(Cont'd)

Page 2 of Return

## SCHEDULE K—BALANCE SHEETS (See Instruction 47)

Items	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
<b>ASSETS</b>				
1. Cash.....	.....	\$ 33,200.29	.....	\$ 7,090.78
2. Notes receivable.....	.....	200.00	.....	245.00
3. Accounts receivable.....	\$ 178,796.59	.....	\$ 144,520.09	.....
Less reserve for bad debts.....	.....	178,796.59	3,097.77	141,422.32
4. Inventories:				
Work in process.....	\$ 81.18	.....	.....	.....
Supplies.....	47,831.70	.....	\$ 39,754.37	.....
	.....	47,912.88	.....	39,754.37
7. Deferred Charges:				
Prepaid insurance.....	\$ 21,109.04	.....	\$ 17,417.09	.....
Prepaid taxes.....	304.50	.....	295.50	.....
All other.....	27,930.09	49,343.63	16,938.96	34,651.55

vs. Samuel Goldwyn



## Respondent's Exhibit D—(Cont'd)

## Schedule K—Balance Sheets—(Cont'd)

Page 2 of Return—(Cont'd)

Items	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
<b>ASSETS—(Cont'd)</b>				
8. Capital assets:				
Land (Leased) .....				
Buildings and Leasehold Improvements.....	\$ 1,057,989.67		\$ 1,066,124.31	
Machinery and equipment.....	976,937.42		987,927.01	
Furniture and fixtures.....	73,182.45		76,735.34	
Delivery equipment.....	21,529.98		21,694.98	
	\$ 2,129,639.52		\$ 2,152,481.64	
Less reserves for depreciation (except on land) .....	1,266,858.54	862,780.98	1,526,708.68	625,772.96
11. Other assets (describe fully):				
Deposit to be applied on purchase of land if option to purchase is exercised.....	\$ 43,718.74	43,718.74		
12. Total Assets.....		\$ 1,215,953.11		\$ 848,936.98

Respondent's Exhibit D—(Cont'd)

Schedule K—Balance Sheets—(Cont'd)

Page 2 of Return—(Cont'd)

	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
LIABILITIES				
13. Notes payable (less than one year).....	.....	\$ 40,000.00	.....	.....
14. Accounts payable.....	.....	74,025.53	.....	\$ 53,744.06
17. Accrued expenses:	\$ 333.33	.....	.....	.....
Interest.....	.....	.....	.....	.....
Taxes.....	.....	333.33	\$ 967.10	.....
All other.....	.....	.....	.....	967.10
18. Other liabilities (describe fully):	\$ 203,091.00	203,091.00	.....	.....
Dividends Payable.....	.....	.....	.....	.....
19. Capital stock:				
Common stock (less stock in treasury).....	\$ 967,100.00	967,100.00	\$ 967,100.00	967,100.00
20. Surplus.....	\$ 68,596.75	.....	\$ 172,874.18	.....
21. Undivided profits.....	.....	68,596.75	.....	172,874.18
22. Total Liabilities.....	.....	\$ 1,215,953.11	.....	\$ 848,936.98

## Respondent's Exhibit D—(Cont'd)

## Page 3 of Return

SCHEDULE L—Reconciliation of Net Income and Analysis of  
Changes in Surplus

1.	Net income from Item 26, page 1 of the return....	\$101,349.36
(f)	Other items of nontaxable income (to be detailed):	
	(1) Profit from exchange of assets in kind....	169.70
* * * *		
5.	Total of Lines 1 to 4, inclusive.....	\$101,179.66
6.	Total from Line 14.....	3,097.77
7.	Net profit for year, as shown by books, before any adjustments are made therein (Line 5 minus Line 6) .....	\$104,277.43
8.	Surplus and undivided profits as shown by bal- ance sheet at close of preceding taxable year.....	68,596.75
* * * *		
10.	Total of Lines 7 to 9, inclusive.....	\$172,874.18
* * * *		
12.	Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11) .....	\$172,874.18
13.	Unallowable deductions:	
	(i) Additions to reserve for bad debts which are not included in Item 20, page 1 of return....	3,097.77
14.	Total of Line 13.....	\$ 3,097.77
* * * *		

NET INCOME (OR DEFICIT) REPORTED IN RETURN  
FOR 1932 BEFORE DEDUCTING NET LOSS  
FOR PRIOR YEAR

1.	Enter amount of net income (or deficit) for 1932 before deducting net loss for prior year.....	\$ 28,475.54
2.	Enter amount deducted in return for 1932 as net loss for prior year.....	\$ 0.00

## KIND OF BUSINESS

3. State the main business engaged in, also whether acting as principal or as agent on commission; state if inactive or in liquidation: Designing and constructing motion picture sets of common building materials. Providing labor, space, services, facilities and equipment for production of motion pictures.



## Respondent's Exhibit D—(Cont'd)

Check the proper block below to indicate the general industrial division in which the corporation's main income-producing business falls:

Manufacturing— [x] Other manufacturing.

x

[x] Service—professional, business, amusement, and domestic, including hotels, restaurants, laundries, etc.

### AFFILIATIONS WITH OTHER CORPORATIONS

See Instruction 42

4. Is this a consolidated return of two or more corporations? No.

5. Was the income of this corporation included in a consolidated return for the prior year? No.

### PREDECESSOR BUSINESS

6. Did the corporation file a return under the same name for the preceding taxable year? Yes. Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? Yes. If answer is "yes," give name and address of each predecessor business, and the date of the change in entity: Pickford-Fairbanks Studios Co., November 22, 1926; United Artists Studio Corp., February 16, 1931.

### BASIS OF RETURN

7. Is this return made on the basis of actual receipts and disbursements? Yes.

### VALUATION OF INVENTORIES

8. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock: Cost or market, whichever is lower.

### LIST OF ATTACHED SCHEDULES

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

Schedule "A"—Miscellaneous Costs

Schedule "D"—Repairs and Maintenance

Schedule "G"—Bad Debts

Schedule "I"—Depreciation

Schedule "X"—Operating Expenses

## Respondent's Exhibit D—(Cont'd)

Page 4 of Return

## SCHEDULE A (See Instructions 2 and 5)

See separate schedule

\* \* \* \*

## SCHEDULE C—COMPENSATION OF OFFICERS

(See Instruction 14)

1. Name of Officer: A. M. Brentinger. 2. Official Title: Vice President. 3. Time Devoted to Business:  $\frac{3}{4}$ . 6. Amount of Compensation (Enter as Item 14): \$13,900.00.

## SCHEDULE D—Cost of Repairs (See Instruction 16)

See separate schedule

## SCHEDULE E—Taxes Paid (See Instruction 18)

1. Items	2. Amount (Enter as Item 18)
Los Angeles—City and County.....	\$ 23,093.72
State of California—Franchise.....	25.00
State of California—Auto Licenses.....	203.00
Federal Bank Check Tax.....	336.28
Federal Capital Stock Tax.....	967.10

\* \* \* \*

\$ 24,625.10

## SCHEDULE G—Bad Debts (See Instruction 20)

See separate schedule

\* \* \* \*

## SCHEDULE I—Explanation of Deduction for Depreciation

(See Instruction 22)

See separate schedule

The Assistant Treasurer being absent from the City, Mr. R. P. Fairbanks, who is President, has signed as President and also for the Assistant Treasurer. The office of Treasurer is vacant at the present time.

## AFFIDAVIT

I, the undersigned, president of the corporation for which this return is made, being duly sworn, depose and say that this return, including the accompanying schedules and statements, has been examined by me and is, to the best of my knowledge and

Respondent's Exhibit D—(Cont'd)

belief, a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1932 and the Regulations issued thereunder.

(Corporate Seal)

/s/ R. P. FAIRBANKS,  
President.

/s/ R. P. FAIRBANKS,  
For the Asst. Treasurer.

Sworn to and subscribed before me this 12th day of September, 1933.

(Seal) /s/ MAYBELLE STREETER,  
(Signature of officer administering oath)

[Endorsed]: T.C.U.S. Admitted in evidence Nov. 4, 1946. [206]

---

RESPONDENT'S EXHIBIT E

Douglas Fairbanks (Company)

Balances at Dates Indicated Owing to United  
Artists Studio Corp.

A.	Jan. 7, 1931 .....	(N. P.) \$1,008.38
B.	Jan. 16, 1932 .....	3,529.91
C.	Dec. 31, 1932 .....	4,202.90
D.	Jan. 7, 1933 .....	4,400.27
E.	Nov. 25, 1933 .....	108.24

[Endorsed]: T.C.U.S. Admitted in evidence Nov. 7, 1946.



## RESPONDENT'S EXHIBIT F

Mary Pickford (Company)

Balances at Dates Indicated Owing to United  
Artists Studio Corp.

## A. Jan. 7, 1931

Title of Account

91 - 25 .....	\$ 108.29
N. P. ....	1,327.88

---

Total—Jan. 7, 1931.....	1,436.17
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---

B. Jan. 16, 1932 ..... 577.37

C. Dec. 31, 1932 ..... 40,471.00

D. Jan. 7, 1933 ..... 13,648.35

E. Oct. 7, 1933 ..... 155.73

[Endorsed]: T.C.U.S. Admitted in evidence Nov.  
7, 1946.

## RESPONDENT'S EXHIBIT G

Samuel Goldwyn Inc., Ltd.

Balances at Dates Indicated Owing to United  
Artists Studio Corp.

## A. Jan. 7, 1931

## Title of Account

The Prodigal .....	\$ 1,766.37
Whoopee .....	114.47
One Heavenly Night .....	466.50
N. P. ....	3,056.96

---

Total—Jan. 7, 1931.....\$ 5,404.30

---

B. Jan. 16, 1932 .....\$ 94,088.69

C. Dec. 31, 1932 ..... 83,625.66

D. Jan. 7, 1933 ..... 103,844.53

E. June 24, 1933 ..... 53,802.23

[Endorsed]: T.C.U.S. Admitted in evidence Nov.  
7, 1946.

## RESPONDENT'S EXHIBIT H

## Feature Productions Inc.

Balance at Dates Indicated Owing to United  
Artists Studio Corp.

## A. Jan. 7, 1931

## Title of Account

N. P. ....	\$ 6,118.21
Kiki .....	5,579.86
Bride 66 .....	120.79
Reaching for the Moon.....	19,459.31
Abraham Lincoln .....	26.29
Madame Du Barry .....	102.65
The Bat Whispers .....	1,483.70
Indiscreet .....	7,054.91
Corsair .....	93.85

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Total—Jan. 7, 1931.....\$ 40,039.57

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B. Jan. 16, 1932 .....	\$129,792.36
C. Dec. 31, 1932 .....	237,456.46
D. Jan. 7, 1933 .....	238,064.04
E. Dec. 30, 1933 .....	49.14

[Endorsed]: T.C.U.S. Admitted in evidence Nov.  
7, 1946.



DATE  
SAT 09

NAME

Major *Palmer*

*788125*

L 11275  
L 11276  
L 11277  
G 11280  
G 11291  
T 11307  
M 11309  
G 11310  
L 11316  
L 11317  
L 11319  
L 11320  
S 11321  
G 11323  
T 11325  
M 11328  
M 11332  
M 11333  
M 11334

859

860

270  
2671  
2520  
1255  
2520  
3843  
2520  
2520  
2520  
4038  
2520  
1255  
600  
6962  
966  
229  
205.2

*Amundson*

8897  
861

315,907

240000

815299  
595299

S 11340  
S 11341  
L 11346  
L 11347  
11348  
11349  
11350  
11351  
L 11352  
S 11359  
T 11361  
T 11363  
G 11365  
G 11377

1899  
2746  
1203  
2822  
2762  
2400  
794  
19000  
62  
737  
20131  
2400





	CHARGES	CREDITS	
L-11385	66	2468	
L-11386		60	
L-11387		911	
L-11388		1253	
T-11392		2088	
T-11393		438	
G-11398		4280	
M-11399		156	
M-11401		1126	
M-11410		924	
L-11412		513	
L-11413		4108	
L-11414		513	
G-11418		908	
10 T-11422	864	250	
T-11423		156	
L-11426		1027	
T-11429		250	
T-11430		250	
L-11431		1140	
L-11432		696	
L-11433		316	
L-11434		3430	
L-11435		4077	
T-11441		500	
T-11446		563	
T-11447		825	
M-11450		405	
T-11452		125	
G-11454		3220	
L-11474	865	277	
L-11475		620	
L-11476		7512	
L-11477		8258	
E-11480		3321	
		6072677	





[illegible]





SHEET  
NO

CREDIT  
RATING

STANDARD FORM 62 PRINTED IN U.S.A.

DATE  
1953

CREDIT  
LIMIT

NAME

ADDRESS

REG. U.S. PAT. OFF. STANDARD BALANCE SHEET

DATE	DESCRIPTION	POSTING REFERENCE	CHARGES		CREDITS		BALANCE		REMARKS
2/11									
	310547	836	1450						
	L 10600		3189						
	L 10603		10800						
	L 10610		407						
	S 10612		1525						
	L 10611		3970						
	L 10633	838	591				83126		
	281 10627	839	532						
	L 10642		742						
	A 10650		315			300			
	L 10662		570						
	A 10673		731						
	L 10679	840	253						
	L 10686		63						
	L 10688		174						
	L 10680		1540						
	A 10716	841	8420				85141		
	L 10722	842	443						
	L 10725		506						
	L 10730		468						
	17 10738		35						
	17 10753		6984						
	L 10758		189						
	L 10764	843	127				86163		
	L 10791	844	30						
	L 10800		6547						
	S 10830	845	915				867705		
	1 Contra	846	3375				864330		
	4-8 m 10850		337						
	L 10870		80						
	L 10889	847	6597						
	m 10908		685				872029		
	L 10911	848	33						
	A 10915	849	6597				878661		
	L 10918	350	676				878731		



*Seaton Production Inc. LITANO*

NAME ADDRESS CREDIT RATING CREDIT LIMIT

DATE OF BILL TO DATE OF PAYMENT STANDARD BALANCE LEDGER

DATE	DESCRIPTION	POSTED DEBIT	CHARGES	CREDITS	BALANCE	REMARKS
7-15	A10387	831	4001			
	A10403		56			
	A10422	832	8683			
	A10425		10227			
3-1	A10520	835	3575			
	A10527		3575			
3-11	A10584	836	3575			
3-18	A10654	837	270			
	A10675	840	3578			
	A10770	841	170			
3-25	A10751	842	3578			
4-1	A10802	844	3578			
	A10805		170			
	Alpha 8857		4849			
4-8	A10852	846	633			
	A10891	847	3578			
	A10918	848	170			
	A10957	849	3578			
	A10958		170			
	A10959		63			
4-22	A10960	850	10000			
	A10965		2300			
	A10974		156			
	A11005		3578			
	A11016		481			
	A11024	851	100			
4-24	A11044	852	4815			
	A11060		3578			
4-26	A11074	853	3578			
	A1108		3578			
13	A11107	854	3578			
4-28	A11107	855	3578			
4-28	A11107	856	3578			
4-28	A11107	857	3578			
4-28	A11107	858	3578			
4-28	A11107	859	3578			
4-28	A11107	860	3578			
4-28	A11107	861	3578			
4-28	A11107	862	3578			
4-28	A11107	863	3578			
4-28	A11107	864	3578			
4-28	A11107	865	3578			
4-28	A11107	866	3578			
4-28	A11107	867	3578			
4-28	A11107	868	3578			
4-28	A11107	869	3578			
4-28	A11107	870	3578			
4-28	A11107	871	3578			
4-28	A11107	872	3578			
4-28	A11107	873	3578			
4-28	A11107	874	3578			
4-28	A11107	875	3578			
4-28	A11107	876	3578			
4-28	A11107	877	3578			
4-28	A11107	878	3578			
4-28	A11107	879	3578			
4-28	A11107	880	3578			
4-28	A11107	881	3578			
4-28	A11107	882	3578			
4-28	A11107	883	3578			
4-28	A11107	884	3578			
4-28	A11107	885	3578			
4-28	A11107	886	3578			
4-28	A11107	887	3578			
4-28	A11107	888	3578			
4-28	A11107	889	3578			
4-28	A11107	890	3578			
4-28	A11107	891	3578			
4-28	A11107	892	3578			
4-28	A11107	893	3578			
4-28	A11107	894	3578			
4-28	A11107	895	3578			
4-28	A11107	896	3578			
4-28	A11107	897	3578			
4-28	A11107	898	3578			
4-28	A11107	899	3578			
4-28	A11107	900	3578			
4-28	A11107	901	3578			
4-28	A11107	902	3578			
4-28	A11107	903	3578			
4-28	A11107	904	3578			
4-28	A11107	905	3578			
4-28	A11107	906	3578			
4-28	A11107	907	3578			
4-28	A11107	908	3578			
4-28	A11107	909	3578			
4-28	A11107	910	3578			
4-28	A11107	911	3578			
4-28	A11107	912	3578			
4-28	A11107	913	3578			
4-28	A11107	914	3578			
4-28	A11107	915	3578			
4-28	A11107	916	3578			
4-28	A11107	917	3578			
4-28	A11107	918	3578			
4-28	A11107	919	3578			
4-28	A11107	920	3578			
4-28	A11107	921	3578			
4-28	A11107	922	3578			
4-28	A11107	923	3578			
4-28	A11107	924	3578			
4-28	A11107	925	3578			
4-28	A11107	926	3578			
4-28	A11107	927	3578			
4-28	A11107	928	3578			
4-28	A11107	929	3578			
4-28	A11107	930	3578			
4-28	A11107	931	3578			
4-28	A11107	932	3578			
4-28	A11107	933	3578			
4-28	A11107	934	3578			
4-28	A11107	935	3578			
4-28	A11107	936	3578			
4-28	A11107	937	3578			
4-28	A11107	938	3578			
4-28	A11107	939	3578			
4-28	A11107	940	3578			
4-28	A11107	941	3578			
4-28	A11107	942	3578			
4-28	A11107	943	3578			
4-28	A11107	944	3578			
4-28	A11107	945	3578			
4-28	A11107	946	3578			
4-28	A11107	947	3578			
4-28	A11107	948	3578			
4-28	A11107	949	3578			
4-28	A11107	950	3578			
4-28	A11107	951	3578			
4-28	A11107	952	3578			
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4-28	A11107	958	3578			
4-28	A11107	959	3578			
4-28	A11107	960	3578			
4-28	A11107	961	3578			
4-28	A11107	962	3578			
4-28	A11107	963	3578			
4-28	A11107	964	3578			
4-28	A11107	965	3578			
4-28	A11107	966	3578			
4-28	A11107	967	3578			
4-28	A11107	968	3578			
4-28	A11107	969	3578			
4-28	A11107	970	3578			
4-28	A11107	971	3578			
4-28	A11107	972	3578			
4-28	A11107	973	3578			
4-28	A11107	974	3578			
4-28	A11107	975	3578			
4-28	A11107	976	3578			
4-28	A11107	977	3578			
4-28	A11107	978	3578			
4-28	A11107	979	3578			
4-28	A11107	980	3578			
4-28	A11107	981	3578			
4-28	A11107	982	3578			
4-28	A11107	983	3578			
4-28	A11107	984	3578			
4-28	A11107	985	3578			
4-28	A11107	986	3578			
4-28	A11107	987	3578			
4-28	A11107	988	3578			
4-28	A11107	989	3578			
4-28	A11107	990	3578			
4-28	A11107	991	3578			
4-28	A11107	992	3578			
4-28	A11107	993	3578			
4-28	A11107	994	3578			
4-28	A11107	995	3578			
4-28	A11107	996	3578			
4-28	A11107	997	3578			
4-28	A11107	998	3578			
4-28	A11107	999	3578			
4-28	A11107	1000	3578			

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10  
1946  
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SHEET NO.

CREDIT RATING

CREDIT LIMIT

NAME

*Nature Production Co. Ltd.*

ADDRESS

STANDARD FORM NO. 646-10-1-1

REG. U.S. PAT. OFF. STANDARD BALANCE SHEET

DATE	DESCRIPTION	POSTED REFERENCE	CHARGES	CREDITS	BALANCE	REMARKS
7-1	19927	819	642			
	19933		506			
	19953		751			
	19972	820	141			
	19982		2794			
	19993		1828			
	210022	821	994			
	A10041		9030			
	A10048		1063			
	A10052	822	20			
11	210062	823	222			
	210066		715			
	210071		4798			
	210078		750			
	210085		450			
	210095		125			
	A10102	824	20			
	A10103	825	2759			
	A10160		1063			
	A10170		8001			
	P10172		750			
18	210271	829	22798			
	A10291	828	6288			
	A10292		1063			
	A10290		7201			
	A10294		2851			
	A10301	829	522			
	A10302		1001			
	A10309		2282			
	A10310		2687			
	A10316		1434			
	A10317		1741			
NS	P10341	830	250			
	A10343		237			
	210376	831	1063			





IN COURT OF THE U.S.  
 DISTRICT COURT FOR THE DISTRICT OF COLUMBIA  
 NOV 7 1948  
 DEPENDENTS  
 DEBENT. L.

NAME	ADDRESS	DATE	AMOUNT	BALANCE
<i>John</i>	<i>John</i>			
Q 11218				
Q 11225				
Q 11241				
L 11262	558	221		
27 L 11272	559	55502		
Q 11282		10		
Q 11292		1245		
T 11206		472		
L 11305				
L 11322		122		
M 11329		20		
<i>John</i>	<i>John</i>			
Q 11367	861	4230		
Q 11382	862	2000		
M 11409		110		
Q 11420	863	1200		
10 Q 11455	864	7250		
Q 11484	865	730		
Q 11491		900		
M 11495		2875		
Q 11507		94		
7 A 11569	866	4730		
A 11583	868	16367		
A 11597		575		
M 11641		4730		
27 L 11678	870	1100		
R 11716	871	79		
A 11728	872	2250		
A 11735	873	289		
A 11765		4230		
M 11774		800		
71 T 11795	874	100		
A 11823	875	163		
M 11830		191		
		60		
	876	169		
	8926	569503		
		601902		



NAME

Douglas Fairbanks Co

SHEET  
NO

ADDRESS

CREDIT  
RATINGCREDIT  
LIMIT

RECEIVED FORM 66 PRINTED IN U.S.A.

DATE	DESCRIPTION	POSTING REFERENCE	CHARGES	Y	CREDITS	Y	BALANCE	Y	REMARKS
1933			601938						
71	A 11873	877	4230		19 30				
	A 121	878	400		9 20				
	A 1503	879	8405		130 19 30				
	Cash	189			601769		13402		
78	A 739	881	4230		601769				
	A 256	882	300		19 30				
	M 769		170		9 20		17852		
15	A 401	885	4230		601769				
	A 626	886	1700		AUG 19 30				
	A 654	887	865		AUG 19 30				
	A 559	890	495		AUG 19 30				
	A 578	-	4230		AUG 19 30				
	A 596	891	600						
	A 610		420		19 30		30392		
79	T 713	894	300						
	A 722		420						
	A 761	895	700		AUG 19 30				
	M 813	897	360		AUG 19 30				
	N 820		11245		AUG 19 30		47029		
85	A 926	900	4230		AUG 19 30				
	M 998	902	90		AUG 19 30				
	A 1017		1450		AUG 19 30		53309		
12	A 1154	906	4230		AUG 19 30				
	A 1256	909	50		AUG 19 30				
	A 1270		800		AUG 19 30				
	M 1299	910	421		AUG 19 30		57920		
19	A 1427	914	1125						
	M 1482	915	225						
	A-1514	916	4230						
	B-1522		450						
	A-1543	917	1200						
19	Cash	190			57215				
		196			1208		7332		
	A-1721	922	85						
	A-1739	923	850						

MM2











In the United States Circuit Court of Appeals  
For the Ninth Circuit

T. C. Docket No. 8770

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,

vs.

SAMUEL GOLDWYN,

Respondent on Review.

### PETITION FOR REVIEW

The Commissioner of Internal Revenue, holding office by virtue of the laws of the United States, hereby petitions the United States Circuit Court of Appeals for the Ninth Circuit to review the decision entered by the Tax Court of the United States on November 17, 1947, ordering and deciding that there is no deficiency in income and victory tax for the calendar year 1943. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the United States Internal Revenue Code.

### I.

### JURISDICTION

Samuel Goldwyn, respondent on review, is an individual residing at 1200 Laurel Drive, Beverly Hills, California, and filed his United States individual income tax return for the calendar year 1942 and his United States individual income and victory tax return for the year 1943 with the Col-

lector of Internal Revenue for the Sixth District of California, located at Los Angeles, California, which collection district is within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit, wherein this review is sought.

## II.

### NATURE OF CONTROVERSY

The question to be presented to this Court for review is: Did the declaration of a cash dividend on September 11, 1930, payable as of December 15, 1930, followed only by the entry on books of the declaring corporation charging surplus and crediting dividends payable accounts, constitute a "distribution" within the meaning of Section 115 (a) of the Internal Revenue Code so as to reduce earnings and profits in the fiscal year ended June 30, 1931 (as contended by taxpayer and held by the Tax Court); or did the distribution and reduction occur in May 1933, when the dividend was credited to the respective shareholders' indebtedness to the corporation (as contended by the Commissioner) whereby, if the former, a distribution made in 1942 to the taxpayer, sole shareholder, is taxable only to the extent of \$104,610.56 and, if the latter, to the extent of \$239,059.58?

In deciding the above question adversely to the Government, five judges dissented, and Judge Disney wrote a dissenting opinion, which the Commissioner contends is in accord with the revenue laws and judicial opinion. The holding of the majority that, although the word "distribution" of a

dividend means payment in determining the time of taxability of the dividend to the shareholder, the word "distribution" means declaration and not payment in determining the source of the distribution to the shareholder presents an anomalous situation and is an unjustified limitation of the principles established in *Mason v. Routzahn* (1927) 275 U. S. 175. It is therefore submitted that "distribution" means a [220] "division or proportionment among several or many" and until earnings and profits of a corporation are actually distributed they remain as such available for future distributions and that the entries made on the corporation's books charging surplus and crediting dividends payable account did not per se make the declared dividends available to the shareholders and accordingly does not constitute payment, actually or constructively within the meaning of the Statute.

### III.

#### ASSIGNMENT OF ERRORS

The errors committed by the Tax Court, which are relied upon by the Commissioner as the basis of this petition for review, are as follows:

That the Tax Court of the United States erred:

1. In holding and deciding that the corporation's surplus was reduced in the amount of \$203,091.00 in the fiscal year 1931 by virtue of the declaration of a dividend on September 11, 1930, payable December 15, 1930.

2. In holding and deciding, in the alternate, that the crediting and control, exercised by the share-



holders over the dividend in the fiscal year ended June 30, 1931, effected a distribution in the fiscal year 1931, and accordingly reduced surplus in the same year by the amount of \$203,091.00.

3. In holding and deciding that the shareholder had complete control from December 15, 1930 of the dividend declared September 11, 1930 and that the shareholders constructively received the dividend as of such date. [221]

4. In holding and concluding that of the dividend of \$800,000.00 received by the taxpayer in 1942 (taxable in 1943) only \$104,610.56 constituted a distribution of earnings and profits subject to tax.

5. In failing to hold and decide that the date of payment or distribution to the shareholders fixed the year in which the surplus was decreased.

6. In failing to hold and decide that the declared dividend was not paid or distributed until the fiscal year 1933 when the respective shareholders' accounts were credited with their proportionate part.

7. In failing to hold and decide that the shareholders did not have control actually or constructively of the dividend declared September 11, 1930 until it was unqualifiedly credited to their respective accounts in May 1933.

8. In failing to hold and conclude that of the dividend of \$800,000.00 received by the taxpayer in 1942 (taxable in 1943) the sum of \$239,059.58 constituted a distribution of earnings and profit subject to tax.

9. In that its opinion and decision are contrary

to the law and the regulations and judicial decision and are not supported by the evidence of record.

10. In ordering and deciding that there is no deficiency in income and victory tax for the calendar year 1943.

11. In failing to order and decide that there is a deficiency [222] in income and victory tax for the calendar year 1943 in the amount of \$117,688.82.

Wherefore, the petitioner on review petitions that the decision of The Tax Court of the United States entered herein be reviewed by this Honorable Court and appropriate action be taken to correct the errors herein complained of.

/s/ THERON L. CAUDLE,  
Assistant Attorney General.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue, Attorneys  
for Petitioner on Review.

Of Counsel:

CLAUDE R. MARSHALL,  
Special Attorney,  
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Feb. 4, 1948. [223]

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To: Ferdinand Tannenbaum, Esq., Z. N. Diamond,  
Esq., 20 Exchange Place, New York, New York:

You are hereby notified that the Commissioner of Internal Revenue did, on the 4th day of February, 1948, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of The Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 4th day of February, 1948.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue, Counsel  
for Petitioner on Review.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Feb. 10, 1948. [224]



[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To: Samuel Goldwyn, 1200 Laurel Drive, Beverly  
Hills, California:

You are hereby notified that the Commissioner of Internal Revenue did, on the 4th day of February, 1948, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of The Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 4th day of February, 1948.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue, Counsel  
for Petitioner on Review.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Feb. 17, 1948. [225]

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD,  
PROCEEDINGS AND EVIDENCE TO BE  
CONTAINED IN RECORD ON REVIEW.

To the Clerk of the Tax Court of the United  
States:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled proceedings, in connection with the petition for review by said Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue.

1. Docket entries in this proceeding.

2. Pleadings.

(a) Petition, including annexed copy of deficiency notice and statement attached hereto.

(b) Answer.

(c) Amended petition.

(d) Answer to amended petition.

3. Findings of Fact and Opinion.

4. Decision. [226]

5. Official Report of Proceedings before the Tax Court of the United States at New York, New York, November 4 to 7, 1946 containing 113 pages, including "contents" and covers.

6. Stipulation of Facts with all exhibits attached (Joint Exhibit 1-A, 2-B, 3-C).

7. Joint Exhibits 4-D, 5-E, 6-F; Petitioner's Ex-

hibits 1, 2, 3, 4, and Respondent's Exhibits A. B. C, D, E, F, G, H, I, J, K, L.

8. Petition for review, including Statement of Points to be relied upon, together with proof of service of notice of filing petition and statement of points and of service of a copy of petition for review and statement of points.

9. Orders of enlargement of time to file record on review.

10. This designation.

Said transcript to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

/s/ THERON L. CAUDLE,  
Assistant Attorney General.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue, Counsel  
for Petitioner on Review.

Notice of filing Designation of contents of record, proceedings and evidence to be contained in record on review, together with a copy of such designation, mailed the taxpayer's attorneys, Ferdinand Tannenbaum and Z. N. Diamond, Esquires, 20 Exchange Place, New York, New York, on the 23rd day of August, 1948.

[Endorsed]: T.C.U.S. Filed Aug. 23. 1948. [227]



[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING DESIGNATION OF CON-  
TENTS OF RECORD, PROCEEDINGS AND  
EVIDENCE TO BE CONTAINED IN REC-  
ORD ON REVIEW.

To: Ferdinand Tannenbaum, Esq., Z. N. Diamond,  
Esq., 20 Exchange Place, New York, New York:

Please take notice that the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, has filed with the Clerk of the Tax Court of the United States on this date his Designation of contents of record, proceedings and evidence to be contained in record on review herein, a copy of which designation of record is delivered to you herewith.

Dated this 23rd day of August, 1948.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue, Counsel  
for Petitioner on Review.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Aug. 30, 1948. [228]

The Tax Court of the United States  
Washington

Docket No. 8770

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

SAMUEL GOLDWYN,

Respondent.

CERTIFICATE

I, Victor S. Mersch, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 228, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 9th day of September, 1948.

(Seal)        /s/ VICTORS. MERSCH,  
Clerk, The Tax Court of the United States.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

T. C. Docket No. 8770

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,  
vs.

SAMUEL GOLDWYN,  
Respondent on Review.

### ORDER

For Cause Shown, It Is Ordered that the time within which to complete, transmit and file the transcript of record on review in the above-entitled cause to this Court, be and the same is extended to and including May 4, 1948.

And It Is Further Ordered that the Clerk of this Court transmit to the Clerk of The Tax Court of the United States a certified copy of this order.

FRANCIS A. GARRECHT,  
U. S. Circuit Judge.

[Endorsed]: T.C.U.S. Filed Mar. 15, 1948.

[Endorsed]: Filed Mar. 8, 1948. Paul P. O'Brien,  
Clerk.



[Title of U. S. Court of Appeals and Cause.]

ORDER

For Cause Shown, It Is Ordered that the time within which to complete, transmit and file the transcript of record on review in the above-entitled cause to this Court, be and the same is extended to and including June 18, 1948.

And It Is Further Ordered that the clerk of this Court transmit to the Clerk of The Tax Court of the United States a certified copy of this order.

FRANCIS A. GARRECHT,  
U. S. Circuit Judge.

A true copy. Attest:

(Seal)        /s/ PAUL P. O'BRIEN,  
Clerk.

[Endorsed]: Filed April 20, 1948. Paul P. O'Brien, Clerk.

[Endorsed]: T.C.U.S. Filed April 26, 1948.

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[Title of U. S. Court of Appeals and Cause.]

ORDER

For Cause Shown, It Is Ordered that the time within which to complete, transmit and file the transcript of record on review in the above-entitled

cause to this Court, be and the same is extended to and including September 16, 1948.

And It Is Further Ordered that the Clerk of this Court transmit to the Clerk of The Tax Court of the United States a certified copy of this order.

FRANCIS A. GARRECHT,  
U. S. Circuit Judge.

A true copy. Attest: May 28, 1948.

(Seal)        /s/ PAUL P. O'BRIEN,  
Clerk.

[Endorsed]: Filed May 28, 1948. Paul P. O'Brien, Clerk.

[Endorsed]: T.C.U.S. Filed June 1, 1948.

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[Endorsed]: No. 12037. United States Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Samuel Goldwyn, Respondent. Transcript of Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed September 14, 1948.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 12037

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

SAMUEL GOLDWYN,

Respondent.

NOTICE AS TO STATEMENT OF POINTS TO  
BE RELIED UPON AND AS TO PARTS OF  
RECORD TO BE PRINTED

Pursuant to Rule 19 of the United States Court of Appeals for the Ninth Circuit, notice is hereby given by the Commissioner of Internal Revenue, petitioner on review herein, as follows:

(1) As the statement of the points on which he intends to rely on the present review, the Commissioner hereby adopts the Statement of Points heretofore filed and served and included within the transcript of Record filed in this Court in this cause; and (2) the Commissioner hereby designates for printing the entire transcript of record filed in this Court in this cause.

Dated this 14th day of September, 1948.

/s/ THERON LAMAR CAUDLE,  
Assistant Attorney General, Counsel for the Petitioner on Review.

[Endorsed]: Filed September 17, 1948. Paul P. O'Brien, Clerk.



